



David B. Cohen

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date:	March 14, 2006
Land Use Action Date:	May 2, 2006
Board of Aldermen Action Date:	May 15, 2006
90-Day Expiration Date:	June 12, 2006

TO: Board of Aldermen
Planning and Development Board

FROM: Michael Kruse; Director of Planning and Development
Nancy Radze Chief Planner
Jean Fulkerson, Principal Planner

DATE: March 10, 2005

SUBJECT: **Petition #102-06(2) KESSELER DEVELOPMENT, LLC** petition for a **CHANGE OF ZONE** from **SINGLE RESIDENCE 3** to **MULTI RESIDENCE 3** for a parcel of land located on LaGrange Street, Ward 8, identified as Section 82, Block 37, Lot 95, and shown as **Lot H-1** on a Subdivision Plan of Land in Newton MA, "Toomey-Munson & Associates, Inc.," dated April 28, 2004, recorded with the Middlesex South County Registry of Deeds in Plan Book 2005, page 102.

Petition #102-06(3) KESSELER DEVELOPMENT LLC petition for a **SPECIAL PERMIT/SITE PLAN APPROVAL** to construct a condominium complex consisting of three (3) structures with one (1) multi-family residence of 52 dwelling units and two (2) single-family attached dwelling structures with a total of 10 units for a combined total of 62 dwelling units with accessory parking on land located on LaGRANGE STREET, Ward 8, known as Section 82, Block 37, Lot 95, and shown as **Lot H-1** on a Subdivision Plan of Land in Newton MA, "Toomey-Munson & Associates, Inc.," dated April 28, 2004, recorded with the Middlesex South County Registry of Deeds in Plan Book 2005, page 102, containing approximately 640,847 sf of land in a **PROPOSED MULTI RESIDENCE DISTRICT 3**.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be

*Current zoning is SR3, petitioner is requesting a zoning map change to MR3

Land Use

Kessler Woods

Land Use

- Single Family Residential
- Multifamily Residential
- Commercial
- Industrial
- Mixed Use
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt

Newton Boundary

Property Boundaries

Ponds/Rivers

Streams

- Intermittent
- Perennial

Pond Names

Buildings

Street Names

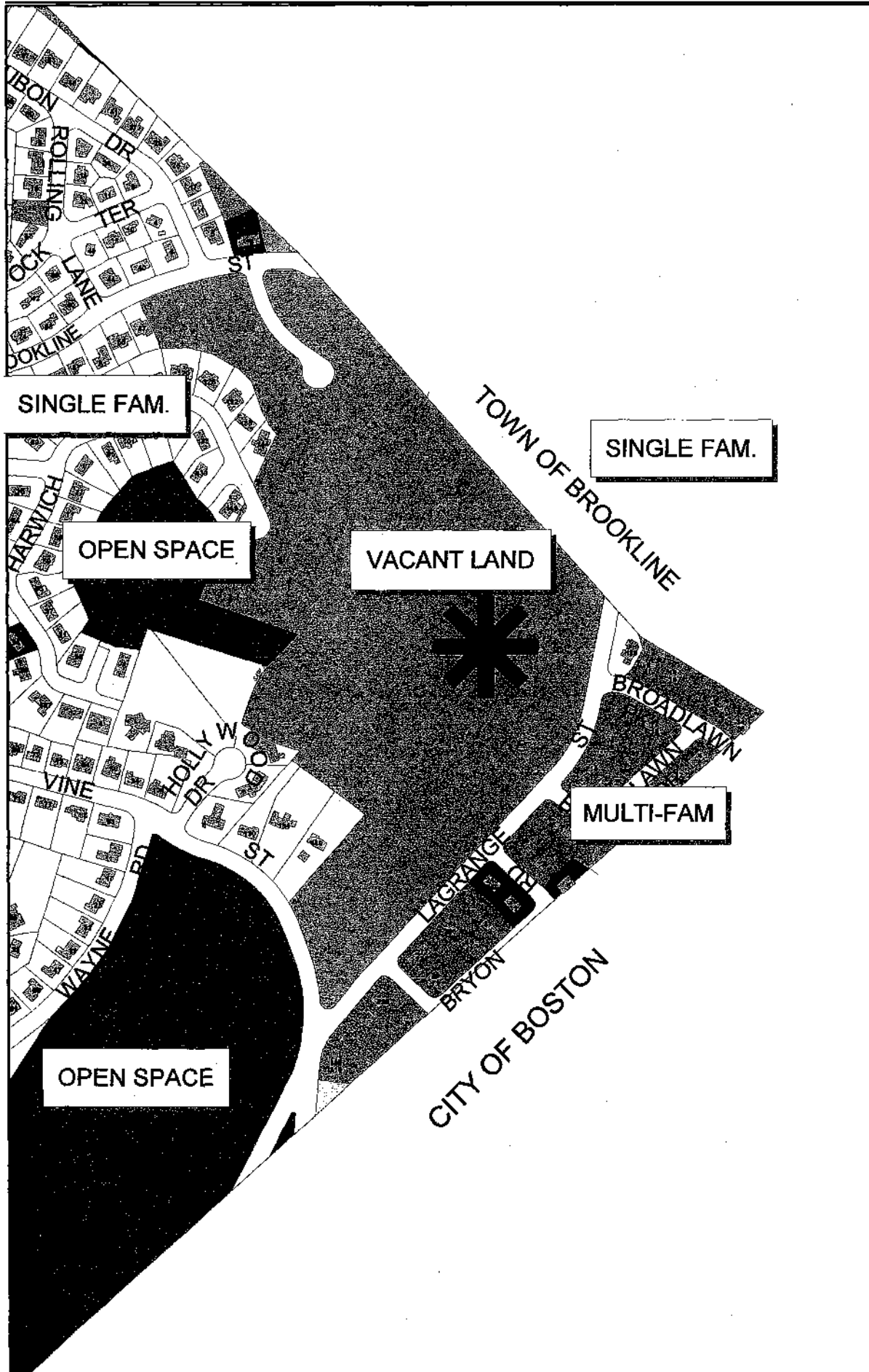
Stream Names

Address Numbers

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other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioner is proposing a 62 unit residential development on a portion of land known as Kessler Woods. The 640,847 sq. ft. (14.71 acre) site is accessed off of LaGrange Street, at the Newton/Brookline border and near the Boston City Line and is currently zoned Single Residence 3 (SR3). The property is part of the former Boston Edison (now NStar) land purchased by the applicant and the City of Newton through a Cooperative Bidding Agreement, originally dated June 20, 2003, and as amended most recently on September 19, 2005. As proposed, the project would include a 52 unit multi-family dwelling and 10 single-family attached dwelling units in two townhouse style structures.

Although single-family attached dwellings are permitted by special permit in the SR3 District (minimum lot size of 1 acre), multi-family developments are not permitted, either by right or by special permit under the current Single Residence 3 zoning. As such, the petitioner is seeking approval for a change in zone to Multi-Residence 3 (MR3). Under the proposed MR3 zoning, the petitioner is seeking approval of a special permit for the proposed 52 unit multi-family dwelling and 10 single-family attached dwellings. In addition, the petitioner is seeking waivers from the parking ordinance (Section 30-19) to allow for some of the parking spaces to be narrower than the minimum required width, lighting levels below 1.0 ft. candles, and the required bicycle racks to be located within the lower level garage of the multi-family structure instead of near the main entrance. In addition, the petitioner is seeking a special permit to alter the grade by more than three feet. A special permit is also necessary to allow for a directional sign to be over 3 sq. ft. in area.

Because the proposed multi-family structure exceeds the maximum permitted height and number of stories currently allowed, either by right or special permit, in the proposed MR3 District, the petitioner has also filed a petition for a change to the text of the Zoning Ordinance to allow a multi-family dwelling structure to have a maximum building height of 48 feet and a maximum number of stories of 4, by special permit, for lots with a minimum of 10 acres, provided that the multi-family dwelling structure is at least 150 feet from the street and at least 75 feet from abutting properties. Because that proposed text amendment is not site specific, that petition will be heard by the Planning and Development Board and the Zoning and Planning Committee of the Board of Aldermen.

If the Board of Aldermen denies the petition for the proposed text amendment to the dimensional controls in the MR 3 District and/or denies the petition to rezone the property from SR3 to MR3, the current project cannot be constructed as proposed.

I. BACKGROUND

In early 2003, Boston Edison announced that it would sell its surplus property known as Kessler Woods, pursuant to the requirements of deregulation, in a sealed auction to the highest bidder. For many years, the City has identified Kessler Woods as a conservation priority in the City's *Recreation and Open Space Plan*. It was determined that acquisition of the property would meet the goals of the Community Preservation Act (CPA) and that CPA funds could be used as a source

of financing. Mayor David B. Cohen established a working group to help guide the City's strategy in responding to Boston Edison's request for bids.

Through an extensive design and selection process the City sought to find a co-bidder with whom the City could purchase the land. The working group evaluated nine proposals, and held a public hearing for community input. The community response to the proposals favored townhouse style structures that mimicked large single-family homes, and which were nestled into the existing topography. Cornerstone Corporation was selected as the City's development partner, with plans for a proposed single-family subdivision on the northernmost portion of the site, off Brookline Street, and attached dwellings on the southernmost portion of the site, off LaGrange Street, which in appearance would resemble large single-family homes.

A cooperative bid was submitted to Boston Edison. After the first round of sealed bidding, the City of Newton and Cornerstone Corporation were invited to submit a second and higher bid. That bid of \$15.1M, with Cornerstone providing \$10.1M and the City contributing \$5M, funded through the Community Preservation Fund, proved to be the successful bid.

Per the terms of the agreement, Cornerstone Corporation acquired Lot J and Lot H (now officially recorded as Lot J, Lot 11, and Lot H-1) of the Kessler Woods site from Boston Edison (SEE FIGURE 1. *SITE CONTEXT*) Lot J is being developed for single-family residences through an Approval Not Required (ANR) Plan for the lots with frontage on Brookline Street, approved by the City Engineer on May 14, 2004 and a Subdivision Plan, reviewed and approved by the Conservation Commission on August 3, 2004, and the Board of Survey on August 11, 2004. Lot H-1 is proposed under the current application to be developed as a 62 unit condominium complex, consisting of three structures.

Under the terms of the Cooperative Bidding Agreement, the City of Newton will receive a Conservation Restriction and easement from Kessler Development over a portion of Lot H (now Lot H-1), consisting of an area of approximately 483,657 square feet. (SEE FIGURE 2. *PLAN OF LAND SHOWING CONSERVATION RESTRICTION AREA AND EASEMENT*). The Conservation Restriction and easement gives the City the right to access land owned by Cornerstone Corporation, for the purposes of pedestrian and recreational access, footpaths and trails. The Cooperative Bidding Agreement also requires that upon the substantial completion of construction, or sale, of ninety percent (90%) of the dwelling units, Cornerstone will transfer to the City \$75,000 for the trail system and creation of a maintenance fund. Additionally, and in accordance with the City's Cooperative Bidding Agreement with Cornerstone, undeveloped land within Lot H-1, Lot 11 and Lot J that is not required by Cornerstone to meet its dimensional requirements for zoning and permitting, is considered "Residual Areas." The Residual Areas will be conveyed to the City for the sum of one dollar (\$1.00) any time within six months after Cornerstone receives approval for and recorded a plan for the development of their parcel. It is anticipated that a maximum of approximately nine acres of Residual Area will be deeded to the City as additional public conservation land. With the 12+/- acres of land that the City currently owns (Lots C, D, and G, located to the north and south of Vine Street), this will potentially bring the City's total ownership of Kessler Woods to approximately 21 acres.

Although the Cornerstone Corporation had initially agreed that a minimum of 20 percent of the units would constitute "Inclusionary Units" as defined in Section 30-24(f) of the Newton Zoning

ELFHY REFERENCE:

DEED BOOK 424.35 PAGE 197 AND DEED
BOOK 424.35 PAGE 200 RECORDED AT
THE MIDDLESEX COUNTY REGISTRY OF
DEEDS.

RIAN REFERENCE:

SUBDIVISION PLAN OF LAND IN NEWTON, MASS.
DATED NOVEMBER 26, 2003 SCALE 1,000' BY
TOOMEY-MUNSON & ASSOCIATES INC. RECORDED AS
PLAN 347 OF 2004 IN DEED BOOK 424.35 PAGE 197.

PLAN OF LAND IN NEWTON, MASS. DATED JANUARY
21, 1965, SCALE 1"=50' BY BARNES ENGINEERING
COMPANY RECORDED AS PLAN 841 (SHEETS A-D) OF
1967 IN DEED 8001(11363 PAGE 245.

LAND COURT PLAN 14485
LAND COURT PLAN 20412
PLAN 123 (A & B) OF 5983
PLAN 1047 OF 1995
PLAN 1808 (A & B) OF 1946
PLAN 1805 (A & B) OF 1946
PLAN 3 (A & E) 24 1967
PLAN 314 OF 1991
PLAN 996 (A-C) OF 1939
PLAN 1146 OF 1951
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PLAN AND PROFILE OF BROOKLINE STREET
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STREET, VINE STREET AND BROOKLINE STREET

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SITE CONTEXT

SUBJECT LOT

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PLAN PURPOSE:
THE PURPOSE OF WAS PLAN IS TO SUBDIVIDE LOT II
INTO NO (2) SEPARATE LOTS. LOT H-1 AND LOT II.
LOT II IS NOT A BUILDABLE LOT AND IS TO COMBINE
MATH LOT I.

LOT H-1 IS TO BE COMPRISED OF 640,847± S.F.
LOT II IS TO BE COMPRISED OF 316,680± S.F.

70111ND #1 ASSIFICATION.
SINGLE RESIDENCE 3 (SR3)
ASAPSSOR'S REFERENCE
Section 82, Block 37, Lot 3

DLINFR/APPLICANE.
C/S XESSELER LLC
725 CANTON STREET
NORWOOD, MA 02062

KESSELER DEVELOPMENT LLE
725 CANTON STREET
NORWOOD, MA 02062

SUBDIVISION
PLAN OF LAND

IN
NEWTON, MA

SCALE: 1"=100' APRIL 28, 2004
TOOMEY - MUNSON & ASSOCIATES, INC.,
CIVIL ENGINEERS & LAND SURVEYORS
89 ACCESS RD., UNIT 12, NORWOOD, MA 02062

PENSIONS

I CERTIFY THAT THIS PLAN HAS BEEN
PREPARED IN CONFORMITY WITH THE
RULES AND REEMLASONS OF THE REGISTERS
OF DEEDS OF THE COMMONWEALTH OF
MASSACHUSETTS.

DATE: APRIL 28, 2004

REGISTERED 197 SURVEYOR

PEAK NOTES

1. PROPERTY NNE INFORMATION SHOWN IS
FROM AN ACTUAL SURVEY IN THE FIELD
BY TOOMEY-MUNSON & ASSOCIATES, INC.
PERFORMED IN AUGUST AND SEPTEMBER,
2003.

2. RTE IS NOT LOCATED IN FEMA 100-YEAR FLOOD
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COMPANY RECORDED AS PLAN 641 (SHEETS 0-0)
1067 04 DEED OOOK 11363 PAGE 243.

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PLAN OF LAND
SHOWING CONSERVATION
RESTRICTION AREA
dc
EASEMENT AREA

NEWTON, MA

SCALE: JANUARY 13, 2001

TOOMEY - MUNSON & ASSOCIATES, II,
ENGINEERS & LAND SURVEYORS
69 ACCESS RD., UNIT 12, NORWOOD, MA 020

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Ordinance, as they began to refine their proposal, despite using best efforts, a development containing 20 percent Inclusionary Units was not feasible. Under the current proposal, 15 percent of the units would constitute "Inclusionary Units" as required by the City's Zoning Ordinance, and another 5 percent of the units would be considered "affordable" to households earning up to 150 percent of the area median income (3 units). A total of 9 units will be required, under Section 30-24(f) of the Zoning Ordinance, with two-thirds of these units available to households earning up to 80 percent of the area median income (6 units) and one-third of these units will be available to households earning up to 120 percent of the area median income (3 units). The Planning Department understands that Cornerstone Corporation recently requested a further amendment to the Cooperative Bidding Agreement to be consistent with the subject proposal.

At present there are no existing Special Permits or Board Orders governing the site that would be subject to discussion by the Land Use Committee. However, the documents that reference the City's agreements with Cornerstone Corporation are attached to this memo as indicated.

- ◆ Cooperative Bidding Agreement, June 20, 2003, between Cornerstone Corporation and the City of Newton. With Amendments #1, #2, #3, and #4 (dated September 19, 2005). Section 4.1.2 calls for no more than 80 single family or residential units, with a preferred plan in Section 4.2.1 calling for "no more than 62 residential units. (See *ATTACHMENT 'A'*).
- ◆ QuitClaim Deed, April 7, 2004, between Boston Edison Company and Kessler Development LLC. (See *ATTACHMENT "B"*)
- ◆ Conservation Restriction to the City of Newton April 7, 2004 in which Kessler Development assigns in perpetuity and for conservation purposes, conservation restrictions on Lot H. (See *ATTACHMENT "C"*).
- ◆ Easement Agreement, April 7, 2004, between Kessler LLC and the City of Newton, to provide the City with certain rights and easements over an Easement Area in order to facilitate the City's purpose of maintaining the Easement Area as publicly accessible conservation land, and the conveyance of Residual Areas. (See *ATTACHMENT "D"*).
- ◆ Development Covenants Agreement, April 7, 2004, between Kessler Development LLC and the City of Newton, in which Cornerstone Corporation agreed to development limitations on Lot J and Lot H (See *ATTACHMENT "E"*).

II. ELEMENTS OF THE PETITIONS

A. Proposed Map Amendment

The petitioner is seeking approval of a Zoning Map amendment from the Board of Alderman to change the current zoning from Single Residence 3 to Multi-Residence 3 (MR3). Changing the zoning district to MR3 will allow the petitioner to request a special permit for the 52 unit multi-family dwelling and two attached single-family dwelling structures with a total of 10 units. At present, multi-family dwellings are not allowed by-right or by special permit under the current SR3 zoning.

The process for a zoning map amendment requires the Land Use Committee and Planning and Development Board to hold a public hearing. The Planning and Development Board will

provide a recommendation to the Land Use Committee, who will, in turn provide its own recommendation to the Board of Aldermen. The zoning map amendment is approved only with a two-thirds vote in the affirmative by the Board of Alderman.

B. Special Permit Application

Cornerstone Corporation is proposing to construct a multi-family residential development in the form of a 52 unit multi-family dwelling and two single-family attached dwelling structures with a total of 10 units on the property known as lot H-1 of Kessler Woods.

The subject property is currently situated in an SR-3 zoning district, however this memo treats the analysis and issues as if the property is located in the proposed MR-3 district since without the zone change the special permit request is invalid. The proposed 52 unit multi-family dwelling structure referred to as Building A is permitted in an MR3 zone only by special permit under Section 30-9(d)(1) of the Zoning Ordinance. In addition, the two townhouse structures proposed as Buildings B and C, containing 6 and 4 units, as single-family attached dwellings, are also only permitted in an MR3 zone by special permit through Section 30-9(b)(5).

In addition, the petitioner is seeking waivers from the parking ordinance (Section 30-19) to allow for some of the parking spaces to be narrower than the 9 ft. minimum required width, lighting levels below 1.0 ft. candles, and the required bicycle racks to be located within the lower level garage of the multi-family structure instead of near the main entrance. In addition, the petitioner is seeking a special permit to alter the grade by more than three feet. A special permit is also necessary to allow for a directional sign to be over 3 sq. ft. in area.

The following table summarized the distribution of the 62 units by building (SEE FIGURE 3. *SITE LAYOUT*).

Unit Distribution, Building	Total in
Building A Multi-Family Main Bldg.	52
Building B Townhouses	6
Building C Townhouses	4
TOTAL	62

All of the units contain two bedrooms, with some units including a den that could be converted into a third bedroom. Cornerstone's plans show a total of 12 "affordable" units, with ten located in Building A, and two located in Building B.

III. ZONING TEXT AMENDMENT – CURRENTLY UNDER REVIEW BY Z.A.P. COMMITTEE

The petitioner is requesting a Zoning Ordinance text amendment of Section 30-15 to allow by special permit multi-family dwellings up to 48 ft in height, and up to 4 stories, provided that there is a minimum lot size of 10 acres, minimum distance to the street of 150 ft., and a distance of 75 ft to abutting properties. The text change would add a new Footnote 9 to Table 1 of Section 30-15. The petitioner states that the reason for the proposed text amendment is to allow the developer to



Photo 1. Looking Across LaGrange Street to Site of Multi-Family Structure



Photo 2. Taken with Back to LaUrange Street looking at site of Multi-Family Structure



Photo 3. View of Portion of Conical Knoll at Center of Site



Photo 4. Rear of Site, Looking at Approximate Area of Townhouse



Photo 5. Looking West, Down into adjacent Wetlands Buffer Area



Photo 6. Looking West, across Bald Pate Meadow to Bald Pate Hill



Photo 7. Looking Northeast to abutter on Rangeley Road, Brookline

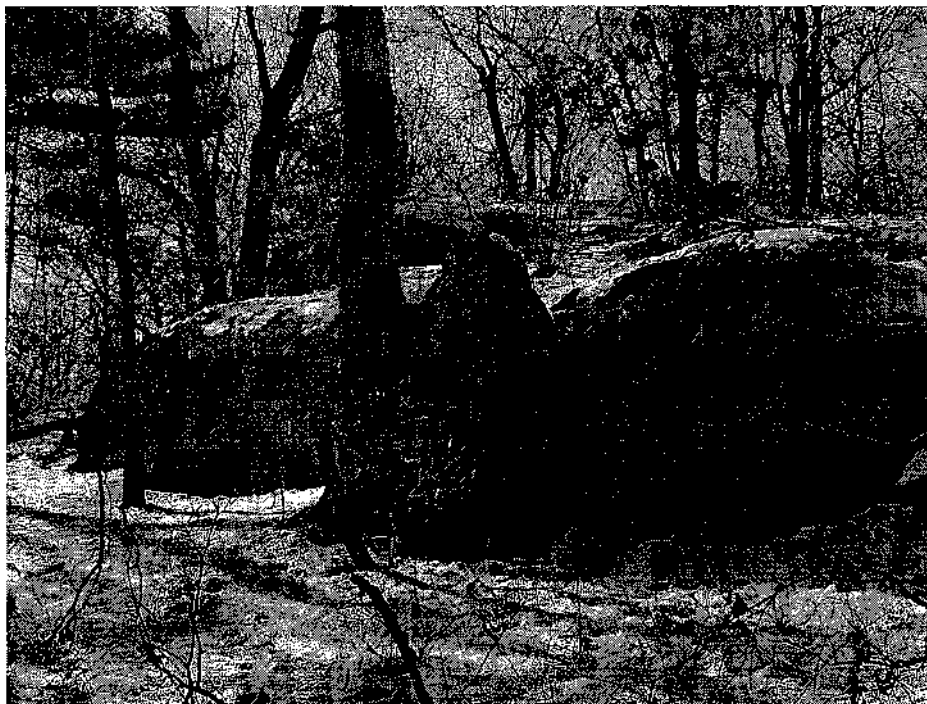


Photo 8. Looking at Highest Point on Site

reduce the amount of building lot coverage, as compared with the original "Preferred Plan," yet maintain 62 dwelling units.

The process for a text amendment requires a public hearing before a joint meeting of the Planning and Development Board and the Zoning and Planning Committee of the Board of Aldermen. Following the public hearing, the Planning Board will apprise the Zoning and Planning Committee of its vote. The Zoning and Planning Committee will then forward its decision to the Board of Alderman. Approval by the Board of Alderman requires a two-thirds vote in the affirmative. The petition for a text change is docketed with the Board of Alderman as follows:

#102-06 KESSELER DEVELOPMENT, LLC proposing to amend to Section 30-15. DENSITY & DIMENSIONAL CONTROLS IN RESIDENTIAL DISTRICTS AND FOR RESIDENTIAL USES. by inserting in Table 1 anew footnote 9 as follows: (9) allow by special permit in a Multi-Residence 3 District a multi-family dwelling structure to have a maximum building height of 48 feet and a maximum number of stories of 4, provided that there is a minimum lot size of 10 acres, the distance from the street to such multi-family dwelling structure is no less than 150 feet and the distance between such structure and abutting properties is no less than 75 feet.

IV ZONING RELIEF BEING SOUGHT

Based on the Chief Zoning Code Official's written determination, dated November 29, 2005 (ATTACHMENT "F"), the petitioner is seeking relief from or approvals through the following sections of the Zoning Ordinance:

- > ***Section 30-9(6)(5) and 30-24 for approval of single family attached dwellings in the MR-3 zone;***
- > ***Section 30-9(d)(1) for approval of multi-family building in the MR-3 zone;***
- > ***Section 30-15, Table 1 proposed footnote 9, for special permit approval of multi-family building having three and a half stories in the MR-3 zone; and for approval of multi-family building 46ft.9 in. in height in the MR-3 zone;***
- > ***Section 30-5(b)(4) for a grade change in excess of 3 ft. for 190,500 sq. ft. and fill area of 8,700 sq. ft. to a maximum grade change of 34 ft.;***
- > ***Section 30-19(m) for the following waivers from the parking requirements:***
 - ◆ ***Section 30-19(h) and Section 30-19(h)(2)e for relief from dimensional standards for parking facilities and maneuvering space for 51 spaces at 8ft. 3 in. x 19 ft., and 1 space at 8ft.8in x 19 ft.;***
 - ◆ ***Section 30-19(j)(1)b for a waiver to allow lighting of parking facilities at less than 1.0 foot candles;***
 - ◆ ***Section 30-19(k)(2) to allow placement of bicycle spaces in garage level instead of near the main entrance;***
- > ***Section 30-20(l) for a waiver of Section 30-20(e)(5) for a free-standing directional sign and sign dimensions in excess of 3 sq. ft.;***
- > ***Section 30-23, for site plan development approval of 52 multi-family and 10 attached dwelling units, including internal and exterior parking, for approval of lighting plan; for approval of landscape plan; and***

- > *Section 30-24(d) for approval of special permit for combined multi-family and attached dwelling unit development.*

Because the petitioner made slight changes to their plan after the completion of the zoning review by the Chief Zoning Code Official, the following required waiver noted in his November 2005 memorandum is no longer relevant:

- Section 30-19(m) for a waiver of 30-19(j)(1)b) to allow two parking spaces to be located as "stacked" outside garages at dwelling units within Building C.

V SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition, the Board of Aldermen should consider the following:

- > *Whether the site is an appropriate location for multi-family dwellings and/or attached single-family dwellings;*
- > *Whether the location, design, and massing of the proposed buildings are compatible with the surrounding neighborhood;*
- > ***Whether a 46 ft. 9 in. tall, 3.5 story building is appropriate for this site;***
- > ***Whether the grade changes in excess of 3 ft. will have any adverse impacts on the abutting neighbors, surrounding neighborhood, or adjacent City-owned Conservation Land, or areas subject to conservation restrictions;***
- *Whether the proposed parking waivers will result in a nuisance and/or serious hazard to vehicles or pedestrians;*
- > *Whether access to and through the site is appropriate for the type and number of vehicles involved;*
- ***Whether the proposed sign waivers are reasonable based on the nature of the use of the premises, the architecture of the building, or its location with reference to the street and will serve the public interest; and***
- > *Whether the proposed structures and site plan respond more appropriately to site conditions than what would be allowed without a special permit.*

VI CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The site of the proposed development is vacant, wooded land, commonly known as Kessler Woods, and is located near an existing single-family residential area to the north, east and west, and a multi-family residential area to the south of LaGrange Street. The subject lot is currently zoned SR3, though the petitioner is requesting a zone change to MR3 in conjunction with this application for special permit. The site of the proposed development, Lot H-1, is 640,847 s.f , or 14.71 acres. *(All photos are at end of document.)*

Portions of the property include delicate environmental features, substantial wetland and floodplain, Saw Mill Brook, a locally rare vegetative community, and a significant amount of diverse wildlife habitat. Topographically the site contains a large conical knoll with views of

the surrounding area. The high portion of the property drops off dramatically at the rear, down to low level wetlands and floodplains associated with the streams that cross the property. The knoll, as it rises up from LaGrange Street, is formed of Roxbury Conglomerate or "Puddingstone" and has an unusual pitch pine and scrub oak habitat, more typically found in southeastern Massachusetts. This information can be found in an assessment of the overall Boston Edison site prepared for the City of Newton by Rimmer Environmental Consulting, titled *Plant Inventory and Wildlife Habitat Assessment, Boston Edison North Parcel Vine, LaGrange and Brookline Streets*, dated, September 22, 1997

For many years the City of Newton considered the site a conservation priority, and deemed it worthy as open space for acquisition by the City. Acquisition of land or conservation rights was identified in the City's Recreation and Open Space Plan 2003-2007 as a priority. This led the City of Newton to enter into a Cooperative Bidding Agreement with Cornerstone Corporation (the petitioner) to acquire portions of the property from Boston Edison.

B. Neighborhood

The subject site is located in a predominately single-family residential area in the southeast corner of the City of Newton. Immediately adjacent to the north and west of the property is an area of single-family homes in both SR2 and SR3 districts, accessed from Vine Street and Brookline Street. Across LaGrange Street to the south is an area of single- two- and multi-family dwellings in the MR1 zoning district, and a larger multi-residence district in the City of Boston. The site is bounded to the east by the Town of Brookline, where single-family homes are located on Rangeley and Princeton Roads.

Through the Cooperative Bidding Agreement, the City of Newton acquired the environmentally sensitive portions of the site contained within the area known as Lots C, D, and G. Furthermore, the City retains rights, through its Conservation Commission, over natural resource protection areas such as streams and wetlands. Additionally, the City holds a conservation easement over portions of Lot H-1 and Lot 11.

VII. ANALYSIS

A. Change of Zone

The petitioner argues that a change of zone from Single Residence 3 to Multi-Residence 3 is necessary to preserve more of the natural features of the site, while providing the economically necessary minimum number of dwelling units. In their application, the petitioner states that this more compact, less invasive development plan reduces building lot coverage to 49,600 sq.ft. or 7.74 percent of the premises. Additionally, they argue that the proposed plan allows a more substantial buffer for the single-family residential neighborhood to the east in the Town of Brookline. At the public hearing, the petitioner is expected to present further evidence that the current development plan conserves more undisturbed land than the earlier Preferred Plan with buildings resembling large single-family homes scattered throughout the site.

The Planning Department supports the change of zoning with the understanding that more of the distinguishable characteristics of the site, including its mature woodlands, the sloping

topography, and other unique environmental qualities are preserved, as compared with the earlier Preferred Plan.

B. Technical Analysis – Dimensional Controls/Section 30-15

The following table demonstrates how the proposed plans for the multifamily and attached dwellings compare to the MR3 Dimensional Controls established in Section 30-15 of the Zoning Ordinance:

Zoning Distric	e ture CiWe	Proposed
Lot Size	15,000 s.f.	640,767 s.f.
Lot area / unit'	4,000 sq. ft. per unit <i>Proposed text amendment, Docket #102-06 would require 10 acre minimum</i>	10,334.95 sq. ft. per unit
Frontage	80 ft. minimum	993 ft.
Setbacks		
Front	25 ft.	87 ft. Bldg B
Side	1/3 bldg ht = 15 ft. 7 inch.	116 ft. Bldg D, 478 Bldg C
Rear	1/2 bldg ht. = 23 ft. 5 inch.	75 ft. Bldg D
FAR	None	0.264
Height		
Attached Dwellings	30 ft.	27 ft. 9 inches
Multi-family		
Existing and/or Lots <10 acres	36 ft.	
Proposed (<i>If proposed text amendment, Docket # 102-06, is approved by the Board</i>)	48 ft.	46 ft. 9 inches
Number of Stories		
Attached Dwellings	2.5 stories	2 stories w/basement
Multi-family		3.5 stories w/basement
Existing and/or Lots <10 acres	3 stories	
Proposed (<i>If proposed text amendment, Docket # 102-06, is approved by the Board</i>)	4 stories	
Max. Bldg. Lot Coverage	45%	9%
MM. Open Space	30%	79%

The petitioner proposes a concurrent amendment to the City's Zoning Ordinance, Section 30-15, Table 1, to add a new footnote that would allow by special permit additional height up to 48 ft. and 4 stories for multi-family dwellings in MR3 Districts. As proposed, the text amendment would be restricted to properties of at least 10 acres, provided that the multi-family dwelling structure is at least 150 feet from the street and at least 75 feet from abutting

¹ NOTE: The data in the table above reflects the more restrictive dimensional controls for attached dwelling and multi-family dwellings

properties. This proposed text amendment is being reviewed, concurrently by the Zoning and Planning Committee of the Board of Aldermen.

If the Board of Aldermen does not approve this or a comparable text amendment, the petitioner would need to revise their plans to comply with the current maximum height and story requirements. In all other respects, the multi-family dwelling and the attached single-family dwelling units would meet the dimensional controls in an MR3 District.

C. Technical Analysis — Parking Requirements/Section 30-19

The following table illustrates how the proposed plans compare with the Parking Requirement of the Zoning Ordinance:

	Proposed	Requirement
# of Req'd Parking Spaces		
Attached Dwellings/garages	2/unit x 10 units = 20 spaces	20 spaces
Multi-family	2/unit x 52 units = 104 spaces	
underground garage		99 spaces
surface		26 spaces
TOTAL	124 spaces	145 spaces
Stall dimensions	9 ft. x 19 ft.	93 stalls meet or exceed the min. requirements; 51 stalls = 8ft 3in x 19 ft.; 1 stall = 8ft 8 in x 19 ft.
HP Space Calculation	6 spaces	6 spaces (4 inside multi-family garage + 2 surface parking spaces)
HP Space dimensions	12ft. x 19 ft.	4 stalls meet or exceed the min. requirements; 2 stalls = 11 ft 3in x 19
Dimensional and Setbacks		
Front	25 ft.	142.24 ft.
Side	1/3 bldg. ht = 15 ft. 7 inch.	110.46 ft.
Rear	1/2 bldg. ht. = 23 ft. 5 inch	47.35 ft.
Landscaping	5 ft wide x 3.5 ft. planting	Meets min. requirements
Bicycle Calculation	124 spaces/10 = 13 bicycle spaces	21 bicycle spaces; in the garage of the MF structure
Lighting Requirement	1.0 ft. candle min.	Less than 1.0 ft. candle
Loading Area	Not required	None provided
Driveway Width — Min.		
One-Way	Min = 12 ft.	18 ft.- 20 ft. One Way
Two-Way	Min. = 20 ft.	20 ft. — 24 ft. Two Way
Max. Entrance/Exit Driveway Width	25 ft.	24 ft.
Maneuvering Aisle Widths		

One-Way		
w/Parallel parking spaces	12 ft.	NA
w/90° parking spaces	24 ft.	24 ft.
Two-Way		
w/Parallel parking spaces	20 ft.	NA
w/90° parking spaces	24 ft.	24 ft.

In his memo of November 29, 2005 the Chief Zoning Code Officer noted several problems with the applicant's parking plan. Some of these deficiencies were since corrected on the "Building A Garage Floor Plan" dated January 23, 2006, but several still require waivers via special permit.

Within the parking floor plan for Building A, a total of 54 parking spaces are smaller than the minimum dimensional requirements. Two handicap spaces are smaller than the required 12 ft. minimum width, and 52 other parking spaces are smaller than the 9 ft. minimum. The proposed bicycle stalls meet the requirements of Section 30-19 in terms of number, but not in their placement, which is not near the main entrance or within view of pedestrian traffic.

D. Technical Analysis – Sign Regulations/Section 30-20

The following is a comparison of proposed signs in relation to the requirements in Section 30-20.

Proposed	City Ordinance	City Ordinance
Entrance Sign	10 sq. ft.	10 sq. ft.
Directional Sign "Building A Ahead..."	No more than 3 sq. ft.	10 sq. ft
Directional Signs others	No more than 3 sq. ft.	3 sq. ft.

The proposed free-standing entrance sign is permitted under Section 30-20(e)(2) because it is associated with a single housing development. However the building directional sign indicated for the interior of the site exceeds the maximum for a directional sign, which is limited to 3 sq. ft. This directional sign requires a waiver from the City's Zoning Ordinance.

E. Conservation Commission

The Conservation Commission does not have jurisdiction with regard to this proposal. Though Saw Mill Brook – South Branch, runs through the southwest portion of the property, site work associated with this proposal is located outside of the 100 ft. wetland buffer and as such is not under the jurisdiction of the Conservation Commission.

F. Inclusionary Housing Plan

Cornerstone Corporation submitted an Inclusionary Housing Plan (IHP) in conjunction with its special permit application. The IHP was reviewed by the Housing and Community Development staff and, as of the writing of this memo, the staff is satisfied with the IHP with the exception of the description of its condominium fees, and the distribution of the

affordable units within the development. (See *ATTACHMENT "G": Inclusionary Housing Plan Review*)

G. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site

The Planning Department remains concerned with the width of the interior driveways and the loop-road that circles the multi-family dwelling. At development review meetings with the petitioner, *prior to filing*, the Department recommended that if the petitioner was going to provide a loop-road around the site, it should be one-way and should be no more than 16 ft. in width. If, however, they were to propose a two-way driveway, then the loop-road would *not* be necessary, and the driveway segment along the rear of the multi-family structure should be removed. This recommendation was based on the desire to reduce any unnecessary pavement while trying to ensure safe access for residents, visitors and emergency vehicles.

The recommended 16 ft. width for a one-way loop-road is more than sufficient for one-way travel and allows for the Fire Department to set up the outriggers on their trucks. At present, some segments of the roadway are 20 ft. and 24 ft. wide. The 24 ft. wide segment of the loop-road immediately in front of the main building is particularly troubling because it appears to be designed for two-way travel. This creates not only a perceived two-way accessway to the townhome units (Building B) at the west end of the site, but also results in potential for conflicts at the main entrance.

Moving beyond the parking area at the front of the site, the loop-road narrows to 20 ft. in width to areas just beyond the townhome unit structures. Although there may be signage indicating that this is a one-way road, because the proposed 20 ft. width is *just* wide enough to accommodate 2-way travel, and some residents and or visitors, the latter of whom may not know that this is one-way road, may go against the restricted travel way to enter/exit through the shortest route. If other drivers, bicyclists or pedestrians are expecting one-way travel only, there may be safety issues related to the vehicles travelling the wrong way. Also, because of the extra width, some residents and/or visitors may try to park along this loop road, particularly in front of the townhomes. Parking along this roadway may compromise the ability of emergency vehicles to access the site and *would* compromise the Fire Department's ability to set up their equipment. This potential for two-way travel and/or parking along what should be a one-way loop-road may also be an issue during snowstorms, when the travel width might be reduced, due to snow.

If the petitioner intends to utilize a one-way loop road, then the Planning Department strongly recommends that the interior loop road be no wider than 16 ft., and that parking along the loop road be prohibited through the use of no parking signage and language in the condominium documents. The Planning Department also recommends that the 90 degree parking surface parking spaces across from the pool be changed to angled parking to facilitate maneuvering in and out of these parking spaces, and to emphasize the one-way direction of the loop road. If, however, the petitioner determines they would really prefer a two-way road, then the Planning

Department recommends the loop-road segment along the rear be removed as it becomes unnecessary for safe vehicular travel. The City's outside peer review traffic engineer consultant is expected to provide further comments on this subject at the Land Use Committee public hearing.

The petitioner's plans do not call for a sidewalk along the length of the circular access drive. *The Planning Department recommends that the sidewalk be continued around the rear of the site, to allow for separated travel for residents and bicyclists around the site and to the pool; residents should be encourage to walk and not drive around the site.* In fact, in order to discourage residents of the townhomes from driving to the pool, the Planning Depai intent recommends that the parking spaces adjacent to the pool be eliminated. ***In addition, the Planning Department recommends that the petitioner work with City's Conservation Commission to determine an appropriate location for a pedestrian trail or path that will connect to any trail system established in the conservation easement area.***

The petitioner has indicated that a pool, patio, play area, and entertaining room will be provided for the benefit of the residents of this development. However, the pool and play area can only be accessed by walking through the lobby of the main building, or through the parking garage, both of which are inconvenient for the residents of the townhouses. *The petitioner could provide a walkway or path from the townhouses to the pool area along with agate to allow a direct connection to the pool deck and play area.*

As previously noted, the petitioner is seeking a waiver from the dimensional controls for 2 of the 6 required handicap parking stalls. *The Planning Department does not support this waiver and recommends that the petitioner meet the minimum width requirements for all of the handicap parking stalls.*

The petitioner's photometric plan shows slight light spillover at the intersection of the entrance drive and LaGrange Street. An externally illuminated sign keeps lighting to a minimum. The outdoor parking facilities do not meet the 1.0 foot candle standard as required by Section 30-19. *Because the proposed site is residential in nature and is adjacent to existing residential properties, the Planning Department believes that the waiver to the 1.0 foot candle lighting requirement is appropriate for this site.*

2. Adequacy of the methods for disposal of sewage, refuse and other wastes and the methods of regulating surface water drainage

The City Engineer sought the assistance of a peer review consultant to complete is review of salient engineering issues. The reviews from Woodard & Curran (peer review consultant) and Associate City Engineer have been attached to this report (*see Attachments "H" and "I"*).

At pre-filing meetings, the Planning Department had recommended that the petitioner relocate the dumpster to allow for the possibility of eliminating the loop-road segment along the back of the site and because it appears to be an inconvenient location for

residents of western grouping of townhomes. In addition, the Planning Department recommended getting rid of one of the two parking spaces near the proposed dumpster. While the petitioner explained that the spaces were being provided for the benefit of the residents of the townhome units and that they needed to provide one standard and one-handicap spaces. Since *none* of the townhome units are handicap accessible, there appears to be no need for the handicap stall. ***The Planning Department recommends that the petitioner find a more suitable location for the dumpster and eliminate the handicap parking stall adjacent to the dumpster, or look at alternative ways to handle the trash being generated by the residents of the townhome units.***

3. Avoidance of major topographical changes; tree and soil removal shall be minimized

The current proposal shows major topographical changes to much of the site. The highest point on the property at 218 ft. would be reduced to 195 ft. in order to accommodate the main building. This represents a maximum finished grade change of 23 ft external to the building. As shown on the "Grading Change Plan," almost the entire development site will have grade changes of 3 ft or greater, which means that much of the natural landscape will be altered. The Planning Department believes that the primary reason for this dramatic alteration to the natural topography is because the multi-family dwelling was generally designed for a relatively flat site, rather than one with a significant hill and rocky outcrop, as currently exists. Again, the petitioner argues that their proposed development plan preserves more of the natural features of the site, while providing the economically necessary minimum number of dwelling units. At the public hearing, the petitioner is expected to present further evidence that the current development plan conserves more undisturbed land than the earlier Preferred Plan with buildings resembling large single-family homes scattered throughout the site.

A system of retaining walls supports the remaining topography. The retaining walls are described as being either a stable rock face, or stonewall. *Prior to the Working Session the petitioner should provide specific materials for each wall, including details of the wall's appearance.*

The entrance drive will be depressed, with the hillsides held back on either side with stone retaining walls ranging from 5 to 15 ft. in height. A 2 ft. to 6 stone wall will separate areas of Building A from the loop road. The loop road itself will be supported by another retaining wall ranging from 3 to 7 ft. in height.

The proposed development plan calls for removing 291 trees of a size of 8 caliper inches or greater, or a total of 3,527 caliper inches. This does not include any trees to be removed ranging between 3 inches to 8 inches. The total number of replacement trees is 216, or 680 caliper inches. In addition, in earlier versions of its plans, the petitioner called for planting 250 white pines along LaGrange Street and behind the residential homes on Rangeley Road. The City's Tree Warden, in a letter of February 10, 2006, informed the petitioner that because they were unlikely to survive, these trees could not be counted toward the Tree Preservation Ordinance, and the petitioner subsequently removed the trees from the Landscape Plan.

According to the Tree Warden, the total shortfall of replacement caliper inches is 2,805. Given the City's fee structure of \$400 for every 2.5 caliper inches not replaced, the total fee required prior to the issuance of a Tree Removal Permit is \$448,800. The petitioner should continue to work with the Tree Warden to find an appropriate means of adding landscape screening along LaGrange Street and behind the residential homes on Rangeley Road.

The Tree Warden also asked for additional information in the form of a statement or plan from a Massachusetts Certified Arborist, stating how all remaining trees will be protected per the Tree Preservation Ordinance. ***Prior to the Working Session the petitioner should provide documentation to demonstrate compliance with the Tree Replacement Ordinance to the satisfaction of the City's Tree Warden.***

4. Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the site

See comments above under Section G.1.

Additional comments from the Fire Department are expected to be submitted under separate cover prior to the Land Use Committee public hearing.

5. Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings, or other means

Adequate screening is a major issue associated with this proposal. The development of this property represents a significant change for this area of Newton and Brookline, and the current proposal, though leaving a portion of the property undeveloped, is located in the most topographically prominent location on this site. The main building will be constructed at the (new) highpoint of the property, and will be 46 ft. in height. Because of the substantial amount of tree removal and re-grading associated with the proposal, screening will have to be achieved with abundant new landscaping.

Significant landscaping is required to mitigate the impact on houses on Rangeley Road. The petitioner demonstrated through a set of elevations the degree to which neighbors will be able to see the proposed buildings over the tree-line. Though the main building is 46 ft. in height, because of the significant amount of grade change proposed (from 218ft. down to 195 at its most dramatic), the petitioner asserts that only the roof of the main building will be visible. ***The Planning Department believes that a building responding more thoughtfully to the existing topography, with a lower height, could achieve low visibility without significant grade changes.***

6. Location of utility service lines

The reviews from Woodard & Curran (peer review consultant) and Associate City Engineer have been attached to this report (*see Attachments "H" and "I"*).

7. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines

The petitioner provided two graphic site sections to show the relationship of the proposed buildings to LaGrange Street and Rangeley Road in Brookline. ***Prior to the Working Session the petitioner should prepare additional graphic site sections taken from the City's Conservation Commission land, and conservation easement areas, to show the impact of the development on views and natural features.***

The architecture of the development was described to the Planning Department as emulating an English country cottage style. The façade of Building A is treated with a variety of architectural elements such as bay windows, ocular and eye brow windows, arched dormers, and balconies to try to visually disguise the height and size of the building. Building materials include a cultured stone base (manufactured stone veneer product), stucco (type not indicated), wood balconies, brick chimneys, and an asphalt roof. The petitioner has indicated minor variation in color as well to add further interest to the building.

The architecture of the townhouse buildings is similar to that of the main multi-family dwelling structure. Once again bay windows, eyebrow windows, arched entries and balconies are used to lend interest to the façade. The Planning Department in pre-filing meetings recommended that the petitioner make use of natural materials on the exterior of the buildings, and materials that would wear well over many years. ***The petitioner should provide further details on the exterior materials, and provide material and color samples.***

Each townhome unit has its own garage, accessed from the rear of the building, with a private entrance into the associated unit. Each unit also features a private rear deck. Because the rear entrance to each unit is only accessible through the garage, visitors will undoubtedly want to park close to the front door entrances, along the loop road. As previously noted, this will pose issues with general circulation and particularly for the Fire Depai [went.

The floor plans for Building A have some minor inconsistencies. For example, the staircases in units 312, 313, and 314 do not register with the staircases shown on the second level of these units. The Planning Department is only concerned where discrepancies might eventually result in alterations to the exterior elevations. ***Prior to the Working Session the petitioner should review the floor plans to establish final architectural elevations.***

At the public hearing, the petitioner's architect is expected to describe how the architecture of the proposed buildings relates to the architecture of the surrounding residential neighborhoods.

The signs described in Sheet 4 of 4 by Mary Smith Associates appear to be out of character with the architectural style of the proposed buildings. The petitioner should consider alternative colors and lettering styles to produce a higher quality sign. The

entrance sign should set the standard for all additional directional signs. A revised sign package should be required as a condition of the petitioner's request for a directional sign that is larger than what is permitted under Section 30-20 of the Revised Zoning Ordinance. ***Prior to the Working Session the petitioner should provide a revised sign package that shows a higher quality sign program.***

H. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use/structure

In considering whether this site is an appropriate location for the proposed use and/or structures, the argument comes back to whether or not the proposed development plan preserves more of the natural features of the site, while providing the economically necessary minimum number of dwelling units. At the public hearing, the petitioner is expected to present further evidence that the current development plan conserves more undisturbed land than the earlier Preferred Plan with buildings resembling large single-family homes scattered throughout the site.

The petitioner should prepare a proposed map of the "Residual Area", as described in the Easement Agreement, dated April 7 2004, that would be conveyed to the City should the proposed plan be approved. The City should have a clear picture of not only the size of the Residual Area, based on the current development proposal, but also the locations of the boundary lines. Though not a subject of the special permit review criteria, it goes to the validity of the request for a zoning map change, text amendment, and special permit request.

2. The use as developed and operated will not adversely affect the neighborhood

The proposed use will have a dramatic effect on the site, but because Kessler Woods is a relatively isolated site located in the southeast corner of the City on the border of both Brookline and Boston, the use should not adversely affect abutting neighborhoods, as long as the drainage system has been properly designed and the structures are properly screened. The structures themselves will be visible along LaGrange Street, and to the residents living off of Vine Street, Harwich Road, and Rangeley Road. As previously mentioned, the proposed plan allows a more substantial buffer for the single-family residential neighborhood to the east in the Town of Brookline. At the public hearing, the petitioner is expected to present further evidence that the current development plan conserves more undisturbed land than the earlier Preferred Plan with buildings resembling large single-family homes scattered throughout the site.

3. There will be no nuisance or serious hazard to vehicles or pedestrians

The proposed entrance to the condominium complex is located just past the crest of a hill on LaGrange Street. The Planning Department is concerned that there is insufficient visibility for vehicles leaving the complex, and that cars traveling south on LaGrange will pose a hazard to vehicular traffic trying to exit and enter Kessler Woods. ***The City's outside peer review traffic engineer consultant is expected to provide further comments on this subject at the Land Use Committee public hearing.***

4. Access to the site over streets is appropriate for the type and number of vehicles involved

The City's outside peer review traffic engineer consultant is expected to provide further comments on this subject at the Land Use Committee public hearing.

VIII. SUMMARY

Cornerstone Corporation is proposing a 62 unit residential development on a portion of land known as Kessler Woods. The 640,847 sq. (14.71 acre) site is accessed off of LaGrange Street, at the Newton/Brookline border and near the Boston City Line and is currently zoned Single Residence 3 (SR3). The property is part of the former Boston Edison (now NStar) land purchased by the applicant and the City of Newton through a Cooperative Bidding Agreement, originally dated June 20, 2003, and as amended most recently on September 19, 2005. As proposed, the project would include a 52 unit multi-family dwelling and 10 single-family attached dwelling units in two townhouse style structures.

The petitioner argues that a change of zone from Single Residence 3 to Multi-Residence 3 is necessary to preserve more of the natural features of the site, while providing the economically necessary minimum number of dwelling units. In their application, the petitioner states that this more compact, less invasive development plan reduces building lot coverage to 49,600 sq.ft. or 7.74 percent of the premises. Additionally, they argue that the proposed plan allows a more substantial buffer for the single-family residential neighborhood to the east in the Town of Brookline. At the public hearing, the petitioner is expected to present further evidence that the current development plan conserves more undisturbed land than the earlier Preferred Plan with buildings resembling large single-family homes scattered throughout the site.

The Planning Department supports the change of zoning with the understanding that more of the distinguishable characteristics of the site, including its mature woodlands, the sloping topography, and other unique environmental qualities are preserved, as compared with the earlier Preferred Plan.

In addition, the petitioner is seeking waivers from the parking ordinance (Section 30-19) to allow for some of the parking spaces to be narrower than the minimum required width, lighting levels below 1.0 ft. candles, and the required bicycle racks to be located within the lower level garage of the multi-family structure instead of near the main entrance. In addition, the petitioner is seeking a special permit to alter the grade by more than three feet. A special permit is also necessary to allow for a directional sign to be over 3 sq. ft. in area.

Related to the issue of site design and circulation, the Planning Department would like to see a reduction in the amount of paved impervious surfaces at the site. *Moreover, the Planning Department would like the petitioner to clarify if on-street parking is proposed for this loop road, and to potentially make changes in the width of the loop road. The trash dumpster and parking area located at the rear of the site should be relocated or significantly reduced in scope.*

To facilitate pedestrian circulation, the Planning Department suggests providing a secure secondary access gate to provide a direct connection to the pool deck.

Appropriate screening and tree preservation remain an open question for both the City's Tree Warden and the Planning Department. Because of the unique environmental characteristics of this site, the petitioner must continue to work to demonstrate that adequate screening will be provided.

Prior to the Working Session the petitioner should prepare the following materials:

- ***Revised sign package showing a higher quality design;***
- *Site plan showing revised dumpster location, surface parking plan, and appropriately sized handicap parking spaces;*
- *Revised landscape plans reflecting recommendations from Tree Warden and a Tree Protection Plan approved by the Tree Warden;*
- *Description of play area;*
- *Detailed information on retaining walls;*
- *Graphic site sections taken from City Conservation areas; and*
- ***Plan showing potential Residual Area to be conveyed to City.***

Because the proposed site is adjacent to existing residential properties, the Planning Department supports a waiver from the 1.0 foot candle lighting requirement for parking facilities.

ATTACHMENTS

ATTACHMENT A: Cooperative Bidding Agreement, Amended September 19, 2005.

ATTACHMENT B: Quitclaim Deed, April 7, 2004

ATTACHMENT C: Conservation Restriction to the City of Newton, April 7, 2004

ATTACHMENT D: Easement Agreement, April 7, 2004

ATTACHMENT E: Development Covenants Agreement, April 7, 2004

ATTACHMENT F: Zoning Review Memorandum, November 29, 2005

ATTACHMENT G: Inclusionary Housing Plan Review, March 6, 2006

**COOPERATIVE BEDDING AGREEMENT
REGARDING KESSELER WOODS PROPERTY**

This Agreement entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 725 Canton Street, Norwood, Massachusetts 02062.

WHEREAS, the property known as Kessler Woods, now owned by Boston Edison Company, (hereinafter "Boston Edison") generally consisting of two vacant assessors parcels of land, located in an existing residential area at and near La Grange and Vine Streets, Newton, Middlesex County, Massachusetts, designated by Newton Board of Assessors as parcels #82-41-22 and #82-37-3 all as more particularly described hereinafter, portions of which include delicate environmental features, substantial wetland and floodplain, Saw Mill Brook, a locally-rare vegetative community, and a significant amount of diverse wildlife habitat (hereinafter "Kessler Woods"), and

WHEREAS, for many years the City has identified Kessler Woods as a conservation priority in the *City's Recreation and Open Space Plan*, deeming it worthy of conservation as open space and acquisition by the City;

WHEREAS, Boston Edison, acting pursuant to requirements incumbent upon that company in connection with deregulation of electricity in the Commonwealth of Massachusetts, intends to sell Kessler Woods and has publicly called for bids, stating that it will consider only "no contingency" bids, which must be submitted for the entire Kessler Woods site; and

WHEREAS, Cornerstone, an experienced real estate developer, seeks to acquire portions of Kessler Woods for development of residences; and

WHEREAS, the City seeks to acquire portions of Kessler Woods for open space purposes and also seeks to foster a balanced development of the remaining land, in a manner that maximizes preservation of open space and passive recreation opportunities, affordable housing, integrates housing with existing land characteristics, and is reflective of the concerns and considerations of the existing residential neighbors; and

WHEREAS, Cornerstone seeks to promote the success and value of its private development given its proximity to City-protected open space, and development in accordance with such a balanced approach;

WHEREAS, the City and Cornerstone seek to enter into this Cooperative Bidding Agreement that will allow them to pursue purchase of Kessler Woods by submitting a cooperative bid for the full acreage, to maximize their likelihood of submitting a successful bid.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree and intend to be mutually bound as follows.

Section Submission of bid

1.1. The parties agree to take all steps necessary to prepare and submit a single, timely and responsive bid to Boston Edison, for purchase of Kessler Woods. Cornerstone's share of the cooperative bid price shall be \$6.3 million. The total bid amount will be the sum of Cornerstone's \$6.3 million added to the City's share. The City's share shall be an amount determined in good faith by the Mayor, at his sole discretion, which will further the likelihood of both parties reaching a successful bid and which amount shall be no less than \$3 million and not exceed \$5 million.

1.2 The cooperative bid will identify both parties, the total bid amount and the amount that each party is bidding, and include a brief statement to the effect that the City intends to purchase its share of the land for open space purposes using Community Preservation funds and Cornerstone intends to use its share for private development.

1.3 Cornerstone shall, from its own funds, provide a cashier's check in payment of the initial deposit of \$25,000, which will accompany the parties' bid.

1.4 To satisfy Boston Edison's requirement for evidence of financial ability to perform the purchase, the parties shall include the following documents as part of the bid:

1.4.1 Cornerstone shall provide a letter from its principal bank, Citizens Bank, in substantially the form of a certain letter from such Bank dated April 7, 2003

1.4.2 The City shall provide copies of 1) Order # 227-3 of the Board of Aldermen; 2) City's Comprehensive Annual Financial Report for the year ended June 30, 2002; and 3) a letter dated September 16, 2002 from Moody's Investors Service, which describes the bond rating for the City's most recent issuance of general obligation bonds.

1.5 Except in accordance with the provisions of this Cooperative Bidding Agreement as stated herein, the City and Cornerstone shall not submit any bids for purchase of Kessler Woods or participate as a bidder or potential buyer for Kessler Woods, whether as a partner, through an agent or by any other means, provided that nothing contained herein shall be construed to restrict the parties from, cooperating together to seek the purchase of the property by means of a negotiated transaction, i.e. outside of the pending sealed bid procedure.

LG. If the bid submitted to Boston Edison pursuant to this Cooperative Bidding Agreement is not the successful bid, the parties shall have no further obligations under this Agreement and each party may pursue purchase of all or part of Kessler Woods in any manner. However, if pursuant to paragraph 1.7 below Boston Edison agrees prior to December 31, 2003, to sell Kessler Woods to either the City and/or Cornerstone, Cornerstone and the City will be bound by the terms hereof and will purchase the property pursuant to the terms of this Agreement.

1.7 The parties acknowledge that the City may attempt to have Boston Edison suspend the sale of Kessler Woods through the above-referenced bid process and to enter into a negotiated sale with the City and Cornerstone. If the City is able to enter into such a negotiated sale with Boston Edison, Cornerstone and the City agree that they shall have a coordinated agreement to purchase the Kessler Woods property on all the same terms and conditions as are set forth in this Agreement, except for those provisions which are specific to a bidding process. The City shall be the lead negotiator and Cornerstone may participate in any such negotiations and in any and all events the City shall keep Cornerstone advised as to the City's progress and deliberations. The City shall act in good faith to obtain the best terms it deems possible from Boston Edison, on behalf of itself and Cornerstone, but subject to the terms and conditions of this Agreement. If such negotiations fail to result in a purchase and sale agreement by December 31, 2003, this Agreement shall be null and void.

Section 2. Purchase following successful bid and/or successful negotiated agreement

2.1 Following the successful bid; and/or negotiated agreement with Boston Edison and within one (1) month prior to closing the purchase from Boston Edison, Cornerstone and the City shall execute a detailed agreement, including the terms of covenants and restrictions described herein. Such detailed agreement shall be consistent with and based on the terms of this Cooperative Bidding Agreement, and such additional terms as the parties may agree but not limited to description of the easement and easement area, description of property restrictions on Cornerstone parcel, Inclusionary Zoning provisions, cost and price adjustments between the parties and documents and ratifications of this Agreement and the Bid.

2.2 The parties shall cooperate with one another and use their best efforts to close the purchase from Boston Edison in a timely manner, including but not limited to execution of the Purchase and Sale Agreement and delivery of the purchase funds pursuant to the Bid; fulfilling the Terms and Conditions of Sale, as described in bid documents or as otherwise negotiated; and all other steps and procedures that are customary and reasonable in the context of the real estate purchases of vacant land in the Newton market.

2.3 Cornerstone shall, from its own funds, provide a cashier's check in payment of the 10% deposit which is expected to be required to be delivered to Boston Edison at the execution of the Purchase and Sale Agreement. Any refund of said deposit and any interest thereon shall be returned to Cornerstone.

2.4 The parties will seek to carry out the purchase from Boston Edison by means of separate conveyances directly from Boston Edison to each party for its respective share of the real estate as described in paragraphs 3.1 through 3.5. Towards that end, immediately after the successful bid and/or negotiated agreement with Boston Edison, Cornerstone will arrange to have prepared, in recordable form and consistent with the requirement of M.G.L. c. 41, Sect. 81P, an "approval not required plan" (the "ANR Plan") for submission to the Newton Planning Board which plan shall divide the north 33.48 +/- acre parcel of Kessler Woods (as described in the Boston Edison offering memorandum) into two parcels (substantially as shown on the plan attached hereto as Exhibit A). Cornerstone shall be obligated to arrange for the ANR Plan, as described in the prior sentence, even if Boston Edison does not agree to such separate conveyances. The allocation of

parcels between the City and Cornerstone shall be as set forth in Section 3, below. If Boston Edison does not agree to make such separate conveyances, Cornerstone shall take title from Boston Edison for the entire Kessler Woods Site and immediately thereafter, and upon obtaining ANR approval, Cornerstone shall transfer title of the City Parcel to the City

2.5 If Boston Edison fails to perform in accordance with an agreement with the parties, the parties will cooperate and share the costs of pursuing mutually acceptable legal remedies

Section 3. Real Estate shares

3.1 The parties shall divide ownership of Kessler Woods as set out in this Section 3.

3.2 City Parcel: At the closing with Boston Edison, or pursuant to a conveyance as stated in paragraph 2.4 the City will receive fee ownership of the portion of Kessler Woods situated on the southerly side of Vine Street totaling approximately 8.88 +/- acres of Kessler Woods (as described in the Boston Edison offering memorandum) plus the southerly portion (having an unspecified lot area) of the northerly parcel of Kessler Woods containing approximately 33.48 +/- acres as marked "City" on attached Exhibit A to be more precisely demarcated on the ANR Plan and the Boston Parcel as further described in Paragraph 9.2 herein.

3.3 Cornerstone Parcel: At the closing with Boston Edison, Cornerstone will receive the fee ownership of the remainder of the Kessler Woods property excluding the City Parcel and the Boston Parcel as defined in paragraph 3.2 above and as marked "Cornerstone" on Exhibit A to be more precisely demarcated on the ANR Plan. Cornerstone will simultaneously grant (i) an Easement as hereinafter defined in paragraph 3.4 in favor of the City, benefiting the City Parcel and (ii) certain restrictive covenants as hereinafter defined in paragraph 4.1 in favor of the City, such easements and restrictions to be senior to any mortgages or other liens to be granted by Cornerstone.

3.4 Easements: At the closing with Boston Edison, Cornerstone will grant to the City easements in those portions of the Cornerstone Parcel that are constrained from development as a result of utility easements, floodplain restrictions, wetlands, and Inner-Riparian zone restrictions under the Rivers Protection Act, but not including the wetlands buffer and remaining areas restricted (non-Inner Riparian zone) under the Rivers Protection Act (hereinafter the "Fully Constrained Area"). The Fully Constrained Area is approximately shown as "Full Constraints" on Figure 3 of a plan by Sasaki Associates, dated February 2003 (hereinafter "Sasaki Plan") attached hereto as Exhibit B, however, the final locations of the Fully Constrained Area shall be determined by Cornerstone through its use of Professional Land Surveyors and other professionals who have the credentials to make such determinations, in accordance with legal standards and requirements, and subject to approval of applicable regulatory agencies. The interests conveyed to the City under this paragraph will forever protect the Fully Constrained Area from development and allow public access for pedestrians and will allow for the construction and maintenance by the City of a system of trails. Upon the earlier of substantial completion of construction or sale of ninety percent (90%) of the lots or units, as applicable, for Area 1 and Area 2 as described in Section 4, Cornerstone shall transfer to the City the sum of

seventy-five thousand dollars 75,000, which sum shall be applied by the City for the development of the foregoing trail system and creation of a maintenance fund therefor

3.5 Cornerstone, in its development plans for the Cornerstone Parcel, shall use its best efforts to design the planned developments of the Cornerstone Parcel so as to minimize the amount of the Fully Constrained Areas which will be incorporated into the development lots. The City acknowledges that notwithstanding the use of best efforts by Cornerstone as stated above, that certain portions of the Fully Constrained Area may have to be included in certain of the development lots so as to meet zoning or permitting requirements or for other sound development and planning considerations. At such time as Cornerstone shall have received its subdivision and other permitting approvals for the development of the Cornerstone Parcel, as described in Section 4, below, Cornerstone shall convey to the City, for consideration of \$1, fee ownership, free of all liens, in all portions of the Fully Constrained Area which have not been included within development lots, as provided above; provided however that such portions to be conveyed shall, in any event, constitute a single, contiguous parcel, allowing access through the Fully Constrained Area and providing access to other neighboring conservation land of the City. Upon the foregoing conveyance, the City's easement provided for in paragraph 3.4 shall terminate. Except as stated herein, the City, during the easement period and upon conveyance, shall have sole and complete custody of and control the area designated for public access through the Fully Constrained Area_

4.0 Private Development by Cornerstone

4.1 General restrictions: Upon conveyance by Boston Edison of Area 1 and Area 2 to Cornerstone, Cornerstone will enter into a restriction agreement in favor of the City pursuant by which Cornerstone will agree to limit the development as follows:

4.1.1 Area 1 shall be limited to no more than eight (8) single-family houses, on lots fronting on Brookline Street, but which may include up to three rear lots, within the meaning of section 30-15(b)(4) of the Newton zoning ordinances. Such development will include a suitable undeveloped buffer from the existing residences along Harwich Road. Cornerstone may also propose a plan which may require subdivision approval, provided such plan meets the foregoing design considerations. In either case, Cornerstone will impose upon all the house lots a uniform set of design covenants and restrictions which shall be binding on Cornerstone and any third-party builders of the houses and upon the homeowners, such covenants to be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

4.1.2 Subject to the provisions of paragraph 4.2, Area 2 shall be limited to no more than sixty-four (64) residential units or sixty-four (64) single family houses on lots. In either case, they shall include no less than twenty percent (20%) Inclusionary Units, consistent with section 30-24(f) of the Newton zoning ordinances.

4.2 Preferred Development Plan:

4.2.1 Prior to pursuing any other development approach for Area 2, Cornerstone shall diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan"): Preferred Plan: Development will include no more than 55 residential units, of which no less than twenty percent (20%) will constitute Inclusionary Units, as defined in section 30-24(f) of the Newton zoning ordinances. The buildings will be located on the site to provide an undeveloped buffer consistent with The Architectural Team, Inc. Plan (Exhibit C) from existing nearby houses and LaGrange Street. The massing and scale will be designed so that the Area 2 buildings resemble large single family houses. The City acknowledges that a development plan substantially in the form of the conceptual site plan prepared by The Architectural Team, Inc. on behalf of Cornerstone, (Exhibit C) meets the foregoing criteria; but that material changes from that plan will be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

4.2.2 If development of Area 2 includes fewer than eight single family houses, the Preferred Plan for Area 2 shall be limited to no more than 56 residential units (instead of 55 units), provided that any such development will be subject to all other provisions of paragraph 4.2 I.

4.3 Cornerstone shall pursue all necessary approvals to carry out the Preferred Plan, and shall defend against any challenges and appeals to the issuance of such approvals. Cornerstone's obligations under this paragraph shall include its aggressive and timely defense against the challenges and appeals, through the Massachusetts Trial Court, i.e. Superior Court or Land Court, and, in the event that Cornerstone prevails in the Trial Court, through the appellate courts to conclusion. However, in the event that Cornerstone does not prevail in the Trial Court, the City and Cornerstone, within one (1) week of the entry of judgment, shall jointly choose and engage outside independent legal counsel having substantial expertise in Massachusetts land use litigation and specifically in matters such as are being litigated relative to this proposed Cornerstone development, to provide an opinion regarding the likelihood of success on appeal. If the Counsel's opinion indicates a reasonable likelihood of success of said appeal, Cornerstone shall pursue said appeal to conclusion. Otherwise, Cornerstone may take whatever action it deems appropriate.

4.4 Once Cornerstone receives the final approvals and permits for development in accordance with the Preferred Plan, Cornerstone shall promptly begin construction and pursue such development to completion.

4.5 In the event that Cornerstone fails to receive all necessary approvals to carry out development of Area 2 in accordance with the Preferred Plan, either as a result of denial or judicial outcome, Cornerstone may, subject to the provisions of paragraph 4.1, pursue an alternate development approach for Area 2. The City will cooperate with Cornerstone in the formulation of acceptable alternate development approaches.

4.6 Nothing contained in this Section 4 shall be construed to restrict Cornerstone from choosing to develop fewer units or lots than the maximum number allowed, as specified in paragraphs 4.1.1, 4.1.2 and 4.2.

Approvals by City/Relationship of parties

5.1 The parties recognize that Cornerstone's development of the property will require various approvals by various agencies of the City. The City will cooperate to facilitate a smooth and timely review in response to Cornerstone's applications for such approvals, as the City does with all responsible developers, and in accordance with all legal standards and requirements. The City cannot and does not guarantee the outcome of any of Cornerstone's applications for such approvals.

5.2 Nothing contained in this Cooperative Bidding Agreement shall be construed as creating a partnership, joint venture or trust between the parties. Without any limitation of the foregoing, it is the express intention of the parties that Cornerstone shall not be bound by any municipal, regulatory, or administrative requirements which bind the City as a body politic and corporate. Neither party shall be liable in any way for the debts, obligations or liabilities of the other arising out of or relating to the ownership or development of their respective parcels; and neither party shall hold itself out as having the authority to bind the other except as expressly set forth herein.

5.3 Neither party may assign its rights under this Cooperative Bidding Agreement except upon the prior written approval of the other party, which approval shall not be unreasonably withheld or delayed, provided that any assignment to an entity controlled by the assigning party shall not require such approval. With regard to any assignment by Cornerstone to other than an entity controlled by Cornerstone, Cornerstone recognizes that the City has chosen Cornerstone to enter into this Agreement based on the particular qualifications of Cornerstone and that it shall not be deemed to be unreasonable for the City to withhold its consent to an assignment if it determines that the proposed assignee does not have substantially similar qualifications.

5.4 Following the closing with Boston Edison, should Cornerstone fail to pursue or complete its development in a timely manner, the City shall have the right to purchase the Cornerstone Parcel for Cornerstone's documented hard and soft costs. For the purposes of this paragraph, a "timely manner" shall mean: (i) Cornerstone shall commence the licensing and permitting process promptly after closing and shall, in good faith, diligently pursue the same thereafter. Promptly after the property is subdivided and all local, state and federal licenses, permits and approvals are obtained (and all appeal periods expired or pending appeals favorably and finally resolved) sufficient to qualify to obtain building permits (provided that Cornerstone shall have commenced the licensing and permitting process promptly after closing and shall have, in good faith, diligently pursued the same thereafter) Cornerstone shall market the single family house lots. It is understood that Cornerstone may not be constructing the single family home structures, as this may be performed by third party owners and/or builders and no completion dates for construction can be determined and (ii) with respect to Area 2, commencement of construction shall be within eighteen (18) months after the necessary licenses, permits and approvals are obtained (and all appeal periods expired or pending appeals favorably and finally resolved) (provided that Cornerstone shall have commenced the licensing and permitting process promptly after closing and shall have, in good faith, diligently pursued the same thereafter). The City may assign its rights under this paragraph.

5.5 Following the closing with Boston Edison, should Cornerstone propose to sell a part or all of the Cornerstone Parcel (other than the sale of house lots or condominium units in the ordinary course) to a third party, Cornerstone shall thereafter notify the City of its intention to do so and the price which such third party proposes to pay for the property in question. The City shall have sixty (60) days within which to notify Cornerstone of the City's intention to exercise this right of first refusal to purchase that portion at the third party price within 180 days from receipt of notice from Cornerstone and to close on the purchase thereof. The City may assign its rights under this paragraph.

Costs and price adjustments:

6.1 The deposit payments made by Cornerstone in accordance with paragraphs 1.3 and 2.3 will be credited against Cornerstone's share of the purchase price.

6.2 At the time of closing, each party shall deliver its share of the purchase price, in accordance with the bid and the Purchase and Sale Agreement.

6.3 The following shall apply in the event that the agreement(s) with Boston Edison require(s) the parties to pay the costs of Massachusetts Excise Stamp Tax on the conveyance(s).

6.3.1 If Boston Edison conveys the entire Kessler Woods site to Cornerstone prior to conveyance of the City's share to the City, each party will be responsible for payment of the tax on a pro rata basis.

6.3.2 If Boston Edison conveys Kessler Woods to the parties in separate conveyances, each party will be responsible for the tax on its respective conveyance, as applicable, recognizing that the City expects to be exempt by law from such tax.

6.4 Cornerstone will obtain, at its sole expense, the services of a Professional Land Surveyor to prepare, in recordable form (i) the ANR Plan and (ii) such plans as shall be necessary to show the locations of easements, all as described in paragraphs 3.3 and 3.4. Except as provided in the prior sentence, all costs of survey work shall be borne separately by each party for its respective share of Kessler Woods.

6.5 Each party will be responsible for the cost of title insurance, legal fees and other closing costs incurred in the purchase of the property as well as all their other expenses arising out of or relating to the matters set forth in this Agreement.

Hazardous waste contingencies

7.1 If significant amounts of hazardous waste are discovered on Kessler Woods prior to bid submission, either party may terminate this Cooperative Bidding and Purchase Agreement. In the event of termination under this paragraph, the parties may pursue purchase of Kessler Woods in any manner individually.

7.2. If hazardous waste is discovered on Kessler Woods subsequent to the submission of the bid, but prior to the closing with Boston Edison, the parties will cooperate to obtain the most favorable terms possible from Boston Edison regarding liability and cancellation. If either party is not satisfied with those terms and the total remediation cost is *in excess of* \$200,000, then either party May terminate this Cooperative Bidding Agreement and be liable for its pro rata share of any portion of the deposit(s) already paid to Boston Edison. In the event of termination under this paragraph, the other party may proceed to close on the purchase alone or with a new partner provided that, at such closing, it shall reimburse the other party for any deposit the withdrawing party has paid and this Agreement and the terms hereof shall be null and void

7.3 If hazardous waste is discovered on Kessler Woods after the closing with Boston Edison, each party shall be responsible for the costs attributable to its land (i.e. the City Parcel and the Cornerstone Parcel), and neither party shall be responsible to the other for any hazardous waste located on land of the other party.

8 Default by City

8.1 *If* at any time after submission of the City of Newton/Cornerstone bid documents and prior to the conclusion of the closing on the transaction contemplated by this Agreement it is determined, either by the City or a court, that the City's expenditure of the funds as it is obligated to do hereunder would be unauthorized or unlawful, then the City promptly shall so notify Cornerstone. Upon such an event, Cornerstone may elect in its discretion to proceed as follows:

- (i) Cornerstone may continue with the transaction and purchase the property without involvement by the City of Newton subject to the right of the City of Newton to cure its failure to pay its obligations hereunder within one hundred twenty (120) days of such initial determination that the expenditure is unlawful; or
- (ii) If the City of Newton does not timely cure its failure to pay its obligations as described in subparagraph (i), above, then Cornerstone may proceed with its purchase and development of the entire project site in any manner it deems appropriate and in such event upon notice to the City of Newton this Agreement shall be null and void and without recourse between the parties; or
- (iii) Upon initial determination that the expenditure of funds by the City of Newton is unauthorized or unlawful at any time prior to the execution of the Purchase and Sale Agreement with Boston Edison Company, Cornerstone may terminate this Agreement and forfeit its deposit, if any, and not pursue the purchase of such property, all without recourse between the parties.

Communication Between Parties

9.1 The parties acknowledge their shared intent to cooperate and assist each other in attaining their mutual goals, all in accordance with the provisions of this Cooperative Bidding Agreement.

To that end, up to the closing with Boston Edison, each party agrees to communicate, in a timely manner, with the other party concerning all significant information that it may receive that may impact the progress of the proposed bid or purchase of Kessler Woods.

10. Miscellaneous Provisions

10.1 This Agreement executed in multiples shall be construed under the laws of the Commonwealth of Massachusetts and shall be binding upon and run to the benefit of the parties hereto and their respective successors and assigns. It is the intention that, notwithstanding the fact that this Agreement contemplates that the parties shall enter into subsequent agreements to effectuate the terms hereof, this Agreement shall constitute a fully enforceable agreement under its own terms and that the parties shall, in good faith, prepare, negotiate and enter into the further agreements and instruments contemplated hereby.

10.2 Boston Parcel: The City shall be responsible for an approximately 444 square foot parcel of land in the City of Boston known as Assessors Parcel Number 7834 in ward 20, either by assuming all title and interest through other arrangements for disposition of the Boston Parcel.

10.3 Exhibits:

Exhibit A: Plan dividing northerly parcel between City and Cornerstone portions, with hand drawn line (see paragraphs 2.4, 3.2 and 3.4).

Exhibit B: Figure 3 of Sasaki Associates plan dated February 2003 (see paragraphs 3.4).

Exhibit C: The Architectural Team, Inc., undated (see paragraph 4.2.1).

IN WITNESS WHEREOF, the parties have set their hands and seals as of this 15 day of June 2003.

CORNERSTONE CORPORATION

CITY OF NEWTON

By: we
Its _____
(office) _____

Thc - +
David B. Cohen, Mayor



AMENDMENT #1 TO COOPERATIVE BIDDING AGREEMENT
REGARDING KESSELER WOODS PROPERTY

This Amendment #1 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 725 Canton Street, Norwood, Massachusetts 02062.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003, and pursuant to said Agreement, submitted a bid to Boston Edison; and

WHEREAS, following the-submittal of the bid, Boston Edison has called for Best and Final Bids; and

WHEREAS, the parties wish to submit a new bid and to modify their *Cooperative Bidding Agreement Regarding Kessler Woods Property* in order to reflect the modified arrangements between them;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend their *Cooperative Bidding Agreement Regarding Kessler Woods Property* as follows:

1. Delete paragraph 1.1 and insert the following new paragraph 1.1 in its place:

1.1. The parties agree to take all steps necessary to prepare and submit a single, timely and responsive bid to Boston Edison for purchase of Kessler Woods_ Cornerstone's share of the cooperative bid price shall be 9.1 million. The total bid amount will be the sum of Cornerstone's \$9.1 million added to the City's share. The City's share shall be \$6 million, subject however to the City's appropriation of \$1 million of said sum.

2. Add a new paragraph 1.3.1, as follows:

1.3.1 For purposes of the revised bid, the parties will rely on the cashier's check provided with the parties' initial bid.

Delete paragraph 4.1.1 and insert the following new paragraph 4 1.1 in its place:

4.1.1 Subject to the provisions of paragraph 4.2, Area I (which includes the area off Harwich Road) shall be limited to no more than fourteen single-family housclots, but which may include up to three rear lots, within the meaning of section 30-15(b)(4) of the Newton zoning ordinances, and up to two lots off Harwich Road (for a total of no more than fourteen). Cornerstone will impose upon all the house lots a uniform set of design covenants and restrictions which shall be binding on Cornerstone and any third-party builders of the houses and upon the homeowners, such covenants to be subject to the

prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

4. Delete paragraph 4.1_2 and insert the following new paragraph 4.1.2 in its place:

4.1.2 Subject to the provisions of paragraph 4.2, Area 2 shall be limited to no more than eighty (80) residential units or eighty (80) single family houselots. In either case, they shall include no less than twenty percent (20%) Inclusionary Units, consistent with section 30-24(f) of the Newton zoning ordinances. If the parties agree that Cornerstone has used best efforts but that such a development containing twenty percent (20%) Inclusionary Units is not feasible, parties may *agree* on a lesser number of Inclusionary Units.

- S. Delete paragraph 4.2.1 and insert the following new paragraphs 4.2.1 A and 4.2.1B in its place:

4.2.1 A Prior to pursuing any other development approach for Area 1 (which includes the area off Harwich Road), Cornerstone shall diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan Area 1"): Preferred Plan Area 1: Development will include no more than nine (9) single family houselots fronting on Brookline Street, but which may include up to three rear lots within the meaning of section 30-15(b)(4) of the Newton zoning ordinances, and no more than two (2) single family houselots off Harwich Road (for a total of no more than eleven). Such development will include a suitable undeveloped buffer from the existing residences along Harwich Road.

Cornerstone may also propose a plan which may require subdivision approval, provided such plan meets the foregoing design considerations. The untitled and undated conceptual site plan submitted by Cornerstone, (Exhibit D) meets the foregoing criteria; but material changes from that plan will be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department). Cornerstone will impose upon all the house lots a uniform set of design covenants and restrictions which shall be binding on Cornerstone and any third-party built-in's of the houses and upon the homeowners, such covenants to be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

4.2.1B Prior to pursuing any other development approach for Area 2, Cornerstone shall diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan Area 2"): Preferred Plan Area 2: Development will include no more than 62 residential units, of which no less than twenty percent (20%) will constitute Inclusionary Units, as defined in section 30-24(f) of the Newton **zoning ordinances**. The **buildings** will be located on the site to provide an undeveloped buffer from existing nearby houses and LaGrange Street. The massing and scale will be designed so that the Area 2 buildings resemble large single family houses. The City acknowledges that a development plan substantially in the form of the untitled and undated conceptual site plan submitted by Cornerstone, (Exhibit D) meets the foregoing criteria; but material changes from that plan will be subject to

the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

6. Delete paragraph 4.2.2

Delete paragraph 4.3 and insert the following new paragraph 4.3 in its place:

4.3 **Cornerstone** still, pursue all necessary approvals to carry out Preferred Plan Area 1 and Preferred Plan Area 2, and shall defend against any challenges and appeals to the issuance of such approvals. Cornerstone's obligations under this paragraph shall include its aggressive and timely defense against the challenges and appeals, through the Massachusetts Trial Court, i.e. Superior Court or Land Court, and, in the event that Cornerstone prevails in the Trial Court, through the appellate courts to conclusion. However, in the event that Cornerstone does not prevail in the Trial Court, the City and Cornerstone, within or_l_t (1) week of the entry of judgment, shall jointly choose and engage outside independent legal counsel having substantial expertise in Massachusetts land use litigation and specifically in matters such *as* are being litigated relative to this proposed Cornerstone development, to provide an opinion regarding the likelihood of success on appeal. If the Counsel's opinion indicates a reasonable likelihood of success of said appeal, Cornerstone shall pursue said appeal to conclusion. Otherwise, Cornerstone may take whatever action it deems appropriate.

8. Delete paragraph 4.4 and insert the following *new* paragraph 4.4 in its place:

4.4 Once Cornerstone receives the final approvals and permits for development in accordance with Preferred Plan Area 2, Cornerstone shall promptly begin construction and pursue such development of Area 2 to completion.

9. Delete paragraph 4.5 and insert the following new paragraphs 4.5A and 4.5B in its place:.

4.5A In the event that Cornerstone fails to receive all necessary approvals to carry out development of Area 1 in accordance with Preferred Plan Area 1, either as a result of denial or judicial outcome, Cornerstone may, subject to the provisions of paragraph 4.1, pursue an alternate development approach for Area 1. The City will cooperate with Cornerstone in the formulation of acceptable alternate development approaches, subject to the limitations in paragraph 4.1.

4.5B In the event that Cornerstone fails to receive all necessary approvals to carry out development of Area 2 in accordance with Preferred Plan Area 2, either as a result of denial or judicial outcome, Cornerstone may, subject to the provisions of paragraph 4.1, pursue an alternate development approach for Area 2. The City will cooperate with Cornerstone in the formulation of acceptable alternate development approaches, subject to the limitations in paragraph 4.1.

11. Delete paragraph 4.6 and insert the following new paragraph 4.6 in its place:

4.6 Nothing contained in this Section 4 shall be construed to restrict Cornerstone from choosing to develop fewer units or lots than the maximum number allowed, as specified in paragraphs 4.1 or 4.2, as may be applicable.

12. Add a new paragraph 4.7 as follows:

4.7 In order to create additional Inclusionary Units above the number required by this Agreement and notwithstanding any provision herein to the contrary the City of Newton may pay to Cornerstone the sum of \$300,000 to establish one (1) additional Inclusionary Unit in the Area 2 residential development or for the maximum of two (2) additional Inclusionary Units for the sum of \$600,000, provided however, that this paragraph 4.7 will be effective only if Cornerstone's selling price exceeds \$250,000 for each of the Inclusionary Units required by other provisions of this Agreement.

12. Add new paragraphs 8.2, 8.3 and 8.4 as follows.

8.2 The City's Mayor acknowledges that he has communicated with and will use best efforts to obtain any necessary approvals from the City's Board of Aldermen and the Community Preservation Committee for the expenditure of the additional \$1 million of Community Preservation funds (in addition to the \$5 million that was the subject of final appropriation and approval).

8.3 In the event that a) the City does not appropriate and make payment of the \$] million portion of the funds by January 31, 2004, or b) the City's Mayor notifies Cornerstone that he has decided not to pursue appropriation of such additional \$1 million, the provisions of paragraph 4.2.1A shall no longer be in effect and Cornerstone may, subject to the provisions of paragraph 4.1, pursue an alternate development approach for Area 1. The City will cooperate with Cornerstone in the formulation of acceptable alternate development approaches, subject to the limitations in paragraph 4.1.

13. Amend the provisions of paragraph 8.2 by adding Exhibits D and E as follows:
Exhibit D Untitled and undated conceptual site plan provided by Cornerstone.

Exhibit E Commitment for Title Insurance issued by Fidelity National Title Insurance Company of New York, signed by Richard H. Murphy, Jr on behalf of Murtha, Cullina, Roche, Carens & DeGiacomo, LLP

14. Add an additional paragraph 10.4 as follows:

10.4 The parties acknowledge that the property known as Kessler Woods is described in Exhibit E.

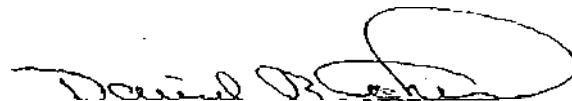
15. All references to "Cooperative Bidding Agreement" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property* shall be interpreted as references to Cooperative Bidding Agreement, as amended by this Amendment #1.
16. All other remaining terms, conditions and provisions of the original. *Cooperative Bidding Agreement Regarding Kessler Woods Property*, except *as* modified herein, shall remain *in* full force and effect.

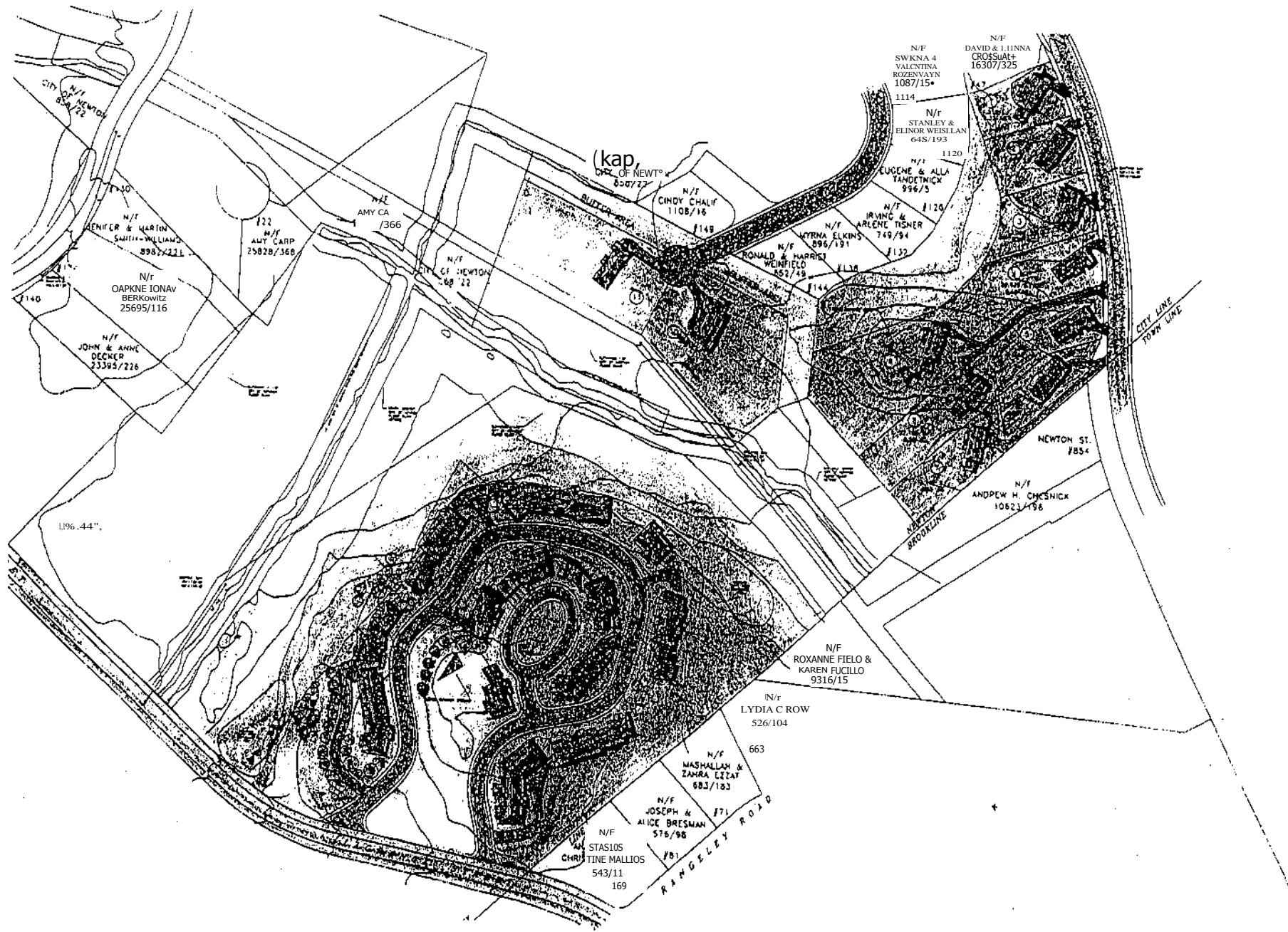
IN WITNESS WHEREOF, the parties have set their hands and seals as of this 7th day of August 2003.

CORP' ONE CORPORATION

CITY OF NEWTON

By:  PThigert.


David B. Cohen, Mayor



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kap,
CITY OF NEW YORK
850722

N/F
DAVID & LILIANA
CROSSMAN
16307/325

N/F
SWKNA 4
VALENTINA
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1087/15

N/r
STANLEY &
ELINOR WEISMAN
645/193

N/r
EUGENE & ALLA
TANDETNICK
996/3

N/r
IRVING &
ARLENE TISER
749/94

N/r
MYRNA ELKINS
895/191

N/r
RONALD & HARRIS
WEINFELD
857/49

NEWTON ST.
7854

N/r
ANDREW H. CHESNICK
10621/196

N/F
ROXANNE FIELO &
KAREN FUCILLO
9316/15

N/r
LYDIA C ROW
526/104

N/F
WASHALLAH &
ZAHRA ELIZAT
683/183

N/F
JOSEPH &
ALICE BRIEWMAN
578/98

N/F
STASIOS
CHRISTINE MALLIOS
543/11
169

RANGELEY ROAD

CITY LINE
TOWN LINE

N/r
BENJAMIN & MARIAN
SMITH-WILLIAMS
8987/211

N/r
OAPKNE IONAV
BERKOWITZ
25695/116

N/r
JOHN & ANNE
DECKER
23395/226

N/r
AMY CAMP
25828/368

N/r
AMY CA
/366

N/r
G. NEWTON
68/22

N/r
CINDY CHALIF
1108/16

Paul Tryer
Cornerstone Corporation

This letter is to confirm our understanding regarding the number of Inclusionary Units in the Preferred Plan for Area 2, in connection with the parties' agreement for purchase and use of Kessler Woods.

At the time that Cornerstone applies for a Special Permit for Area 2, if the sales price for the Inclusionary Units *is* projected at less than \$225,000 (as calculated under the zoning ordinance formula), Cornerstone shall have the right to seek a modification of the agreement governing the number of Inclusionary units. However, if the *sales* price is projected at more than \$275,000, the City shall have the right to seek a modification of the agreement governing the number of Inclusionary units.

VTY
DBC

AGREED:

Paul Tryer

**AMENDMENT #2 TO COOPERATIVE BIDDING AGREEMENT
REGARDING KESSELER WOODS PROPERTY**

This Amendment #2 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 725 Canton Street, Norwood, Massachusetts 02062.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003, and *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; and

WHEREAS, following Boston Edison's call for Best and Final Bids the parties submitted a bid, which was determined to be the highest bid; and

WHEREAS, the parties wish to amend their written agreement in order to make it consistent with the arrangements between them;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend their *Cooperative Bidding Agreement Regarding Kessler Woods Property* as follows:

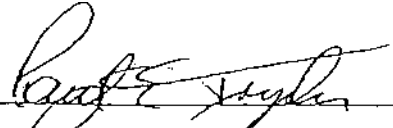
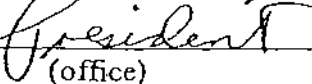
Delete paragraph 4.1.2 and insert the following new paragraph 4.1.2 in its place:

4.11 Subject to the provisions of paragraph 4.2, Area 2 shall be limited to no more than eighty (80) residential units or eighty (80) single family houseslots. In either case, they shall include no less than twenty percent (20%) Inclusionary Units, consistent with section 30-24(f) of the Newton zoning ordinances. If the parties agree that Cornerstone has used best efforts but that such a development containing twenty percent (20%) Inclusionary Units is not feasible, the parties shall agree on a lesser number of Inclusionary Units.

2. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property* and *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this 25th day of August 2003.

CORNERSTONE CORPORATION

By: 
Its 
(office)

CITY OF NEWTON

-JC g L. 

David B. Cohen, Mayor

**AMENDMENT #3 TO COOPERATIVE BIDDING
REGARDING KESSELER WOODS PROPERTY**

This Amendment #3 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 725 Canton Street, Norwood, Massachusetts 02062.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003; *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; and *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 25, 2003; and

WHEREAS, the parties agree that it is necessary to come to a more detailed agreement regarding the local easements and terms of the Conservation Restriction and Easement which affect a portion of the Cornerstone Parcel;

WHEREAS, the parties have agreed to an arrangement, which reflects an equitable arrangement, and desire to further amend said Agreement to reflect such arrangement;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend their *Cooperative Bidding Agreement Regarding Kessler Woods Property* as follows:

1. Notwithstanding any term, covenant or provision set forth in Paragraphs 3.4 and 3.5 of the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, the parties agree that Cornerstone, at the closing with Boston Edison, shall grant to the City a perpetual easement for public access in the Easement Area shown on "Plan of Land Showing Conservation Restriction Area & Easement Area," by Toomey-Munson & Associates, Inc., dated January 13, 2004, with revisions most recently dated 4-1-04, (hereinafter "Easement Plan"), a copy of which is attached as Exhibit F.
2. Notwithstanding any term, covenant or provision set forth in Paragraphs 3.4 and 3.5 and Exhibit B of the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, the parties agree that Cornerstone, at the closing with Boston Edison, shall grant to the City a perpetual conservation restriction, in form and substance satisfactory to the City and its Conservation Commission and in conformance with chapter 184 section 32 of the Massachusetts General Laws, which shall run with the land in perpetuity, in all areas of the Conservation Restriction Area shown on Easement Plan.
3. Cornerstone shall convey to the City, for consideration of \$1, fee ownership, free of all liens, in a certain parcel of land consisting of 21,131+/- sq. ft., which parcel is located southwest of the Harwich Road cul-de-sac, and has frontage on such cul-de-sac, all as shown on Easement Plan, which conveyance shall take place no later than the conveyance of the fee interest required

pursuant to paragraph 3.5.

4. Notwithstanding the provisions of paragraph 2.1 of the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, the parties acknowledge that by mutual agreement, they no longer intend to execute the detailed agreement anticipated in that paragraph.

5. Amend the provisions of paragraph 8.2 by adding Exhibit F as follows:

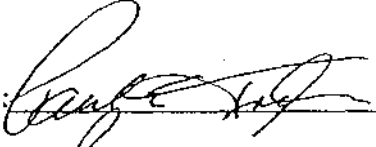
Exhibit F "Plan o'f Land Showing Conservation Restriction Area & Easement Area,"
by Toomey-Munson & Associates, Inc., dated January 13, 2004, with
revisions most recently dated 4-1-04

6. All references to "Cooperative Bidding Agreement Regarding Kessler Woods Property" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, shall be interpreted as references to Cooperative Bidding Agreement, as further amended by this Amendment #3.


7. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property, and Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this 6 day of
L, 2004.

CORNERSTONE CORPORATION

By: 
Its: Pres.

CITY OF NEWTON

By: 
Its: Pl/ y Ur

**AMENDMENT #4 TO COOPERATIVE BIDDING AGREEMENT
REGARDING KESSELER WOODS PROPERTY**

This Amendment #4 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 400 Blue Hill Drive, Suite 2C, Westwood, Massachusetts 02090.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003; *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 25, 2003; and *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on April 6, 2004; and

WHEREAS, the parties agree that it *is* appropriate to modify the Cooperative Bidding Agreement, as amended, to accommodate changes in the massing, scale and design of the Preferred Plan Area 2 Development subject however to the Board of Aldermen's approval of a Special Permit and approval of other governmental agencies;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to further amend the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, as follows:

1. Delete Paragraph 4.2.1B in its entirety and substitute therefor the following new Paragraph 4.2.1B:

"4.2.1B Prior to pursuing any other development approach for Area 2, Cornerstone shall Diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan Area 2"); **Preferred Plan Area 2:** Development will include no more than 62 residential units, of which no less than twenty percent (20%) will constitute Inclusionary Units, as defined in Section 30-24(1) of the Newton Zoning Ordinances. The buildings will be located on the site to provide an undeveloped buffer from existing nearby houses and LaGrange Street. The *massing* and scale will be designed as follows: one (1) larger multi-family dwelling structure with several attached townhome structures situated around the larger structure. The City acknowledges that a development plan substantially in the form of the attached plan submitted by Cornerstone, (Exhibit D) meets the foregoing criteria; but material changes from that plan will be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department)."

2. Amend the provisions of Paragraph 8.2 by deleting Exhibit D Plans and substituting therefor the following new Exhibit D Plans consisting of two (2) sheets:

Exhibit D

SHEET 1: *Kessler Woods Condominiums, Newton, MA, Site Grading & Utility Plan* dated June 8, 2005 prepared by the H.W. Moore Associates, Engineers & Planners;

SHEET 2: Elevations Schematic entitled "Kessler Woods Newton, MA" undated, prepared by The Architectural Team, Inc.

3. All references to "Cooperative Bidding Agreement Regarding Kessler Woods Property" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, shall be interpreted as references to Cooperative Bidding Agreement, as further amended by this Amendment #4.
4. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property, and Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect
5. Notwithstanding the provisions hereof, this Amendment #4 is subject to a) approval by the Board of Aldermen of the Special Permit in connection with Preferred Plan Area 2 (as described in paragraph 1 hereof) and b) approval by any and all governmental agencies that have jurisdiction over the proposed development excluding Building Permits and related building-type permits, such as electrical and plumbing. In the event that Cornerstone has not obtained all such approvals from the Board of Aldermen and other governmental agencies by December 31, 2007, which date shall be extended for the period required to defend appeal(s) of any approval(s), this Amendment #4 shall be of no effect, and thereafter the parties shall be bound by the terms of *Cooperative Bidding Agreement Regarding Kessler Woods Property* as amended through Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this day of September, 2005.

CORNERSTONE CORPORATION

CITY OF NEWTON

By: 

By: 

Its: 

Its: 9/19/05 

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**AMENDMENT #4 TO COOPERATIVE BIDDING AGREEMENT
REGARDING KESSELER WOODS PROPERTY**

This Amendment #4 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 400 Blue Hill Drive, Suite 2C, Westwood, Massachusetts 02090.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003; *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 25, 2003; and *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on April 6, 2004; and

WHEREAS, the parties agree that it is appropriate to modify the Cooperative Bidding Agreement, as amended, to accommodate changes in the massing, scale and design of the Preferred Plan Area 2 Development subject however to the Board of Aldermen's approval of a Special Permit and approval of other governmental agencies;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to further amend the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, as follows:

1. Delete Paragraph 4.2.1B in *its* entirety and substitute therefor the following new Paragraph 4.2.1B:

"4.2.1B Prior to pursuing any other development approach for Area 2, Cornerstone shall Diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan Area 2"); **Preferred Plan Area 2:** Development will include no more than 62 residential units, of which no less than twenty percent (20%) will constitute Inclusionary Units, as defined M Section 30-24(1) of the Newton Zoning Ordinances. The buildings will be located on the site to provide an undeveloped buffer from existing nearby houses and LaGrange Street. The massing and scale will be designed as follows: one (1) larger multi-family dwelling structure with several attached townhome structures situated around the larger structure. The City acknowledges that a development plan substantially in the form of the attached plan submitted by Cornerstone, (Exhibit D) meets the foregoing criteria; but material changes from that plan will be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department)."

2. Amend the provisions of Paragraph 8.2 by deleting Exhibit D Plans and substituting therefor the following new Exhibit D Plans consisting of two (2) sheets:

Exhibit D

SHEET 1: *Kessler Woods Condominiums, Newton, MA, Site Grading & Utility Plan* dated June 8, 2005 prepared by the H.W. Moore Associates, Engineers & Planners;

SHEET 2: Elevations Schematic entitled "Kessler Woods Newton, MA" undated, prepared by The Architectural Team, Inc.

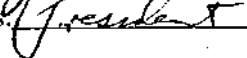
3. All references to "Cooperative Bidding Agreement Regarding Kessler Woods Property" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, shall be interpreted as references to Cooperative Bidding Agreement, as further amended by this Amendment #4.
4. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property, and Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect
5. Notwithstanding the provisions hereof, this Amendment #4 is subject to a) approval by the Board of Aldermen of the Special Permit in connection with Preferred Plan Area 2 (as described in paragraph 1 hereof) and b) approval by any and all governmental agencies that have jurisdiction over the proposed development excluding Building Permits and related building-type permits, such as electrical and plumbing. In the event that Cornerstone has not obtained all such approvals from the Board of Aldermen and other governmental agencies by December 31, 2007, which date shall be extended for the period required to defend appeal(s) of any approval(s), this Amendment #4 shall be of no effect, and thereafter the parties shall be bound by the terms of *Cooperative Bidding Agreement Regarding Kessler Woods Property* as amended through *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property*.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this ____ day of September, 2005.

CORNERS ONE CORPORATION

CITY OF NEWTON

By: 

Its: 

Its: 1\\t'\\C.

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Main Building Elevation

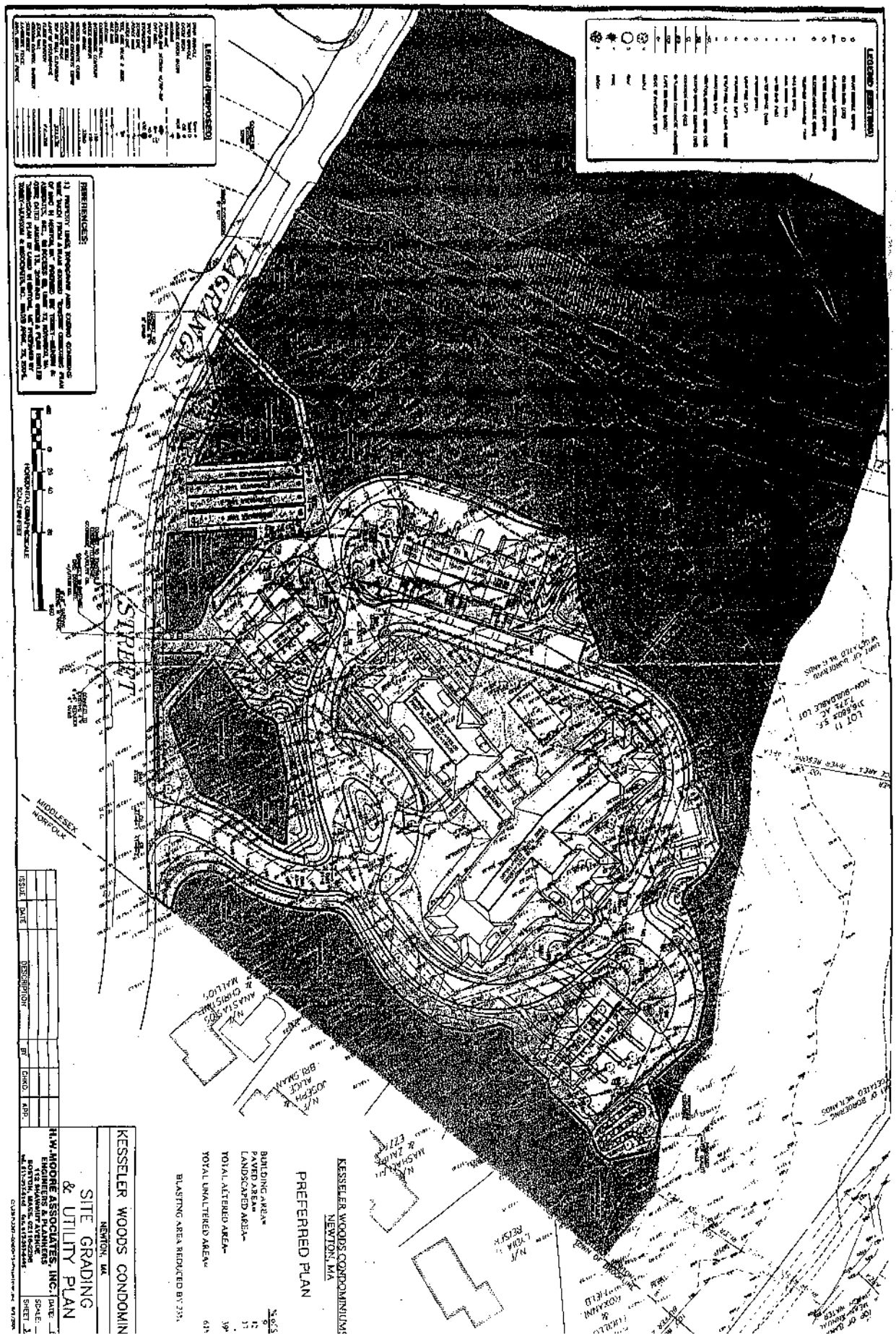


Townhouses Elevation

Tin Architectural Tenn, Inc.
architect

Kessler Woods
Newton, MA

Cornerstone Corporation
developer



I/MO COP PA

C,73' CONYAtit-

$$\text{WiA}), \text{Af1/4i A14}^{4-1} \text{KO}$$

QUITCLAIM DEED

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Bk: 42435 Pg: 200 Doc: DEED

Page: 1 of 3 04/07/2004 03:42 PM

BOSTON EDISON COMPANY, a Massachusetts corporation with an address of One NSTAR Way, Westwood, Massachusetts 02090 ("Grantor"), in consideration of Two Million One Hundred Thousand Dollars (\$2,100,000.00) paid, grants to **KESSELER DEVELOPMENT, LLC** a Massachusetts limited liability company, with an address of do Cornerstone Corporation, 725 Canton Street, Norwood, Massachusetts 02062 ("Grantee"), with QUITCLAIM COVENANTS, that certain parcel of land, together with the improvements thereon, if any, located in the City of Newton, Middlesex County, Massachusetts, and bounded and described as follows:

The land, together with any improvements thereon, located in the City of Newton, Middlesex County, Massachusetts, and shown as **Lot H** on the plan entitled "Subdivision Plan of Land in Newton, MA", by Toomey-Munson & Associates, Inc., dated November 26, 2003, and recorded with the Middlesex South Registry of Deeds herewith. Said Lot H is bounded and described according to said plan recorded herewith as follows:

Beginning at a point on the northerly sideline of LaGrange Street in Newton at the city line with the City of Brookline, said point being the south east corner of the herein described lot; thence

WESTERLY A length of Six and 93/100 (6.93) feet along a curve to the left having a radius of five hundred fifty-one and 19/100 (551.19) feet to a point; thence

S 27°08'26" W Three Hundred Thirty and 40/100 (330.40) feet to a point; thence

WESTERLY A length of Two Hundred Nineteen and 26/100 (219.26) feet along a curve to the right having a radius of Three Hundred Eight-Five and 30/100 (385.30) feet to a point; thence

4,3 S 59°44'46" W Four Hundred Thirty-Seven and 36/100 (437.3.6) feet to a point; thence

N 36°26'15" W Three Hundred Twenty and 71/100 (320.71) feet to a point; thence

N 36°26'15" W Two Hundred Sixty-Nine and 07/100 (269.07) feet to a point; thence

N 60°30'28" E Forty and 00/100 (40.00) feet to a point; thence

N 54°01'55" W One Hundred and 25/100 (100.25) feet to a point; thence

N 46°26'50" W Fifty-Four and 10/100 (54.10) to a point; thence

N 36°26'15" W Approximately fifty-four \pm (54 \pm) feet to the centerline of Saw Mill Brook; thence

EASTERLY A distance of approximately One Hundred Ninety ($190\pm$) along the

MASSACHUSETTS EXCISE TAX
Southern Middlesex District # 00
Date: 04/07/2004 03:42 PM
CIN# 027025 01502 Doc# 00082008
Fee: \$9,576.00 Cons: \$2,100,000.00

LACRANCE ST N

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PLAN IN RECORD

center line of Saw Mill Brook to a point; thence

N 59°50'28" E One Hundred Thirty and 72/100 (130.72) feet to a point; thence

N 53°15'52" W One Hundred Thirty-One and 32/100 (131.32) feet to a point; thence

N 43°36'58" E Two Hundred Seventy-Nine and 85/100 (279.85) feet to a point;
thence

N 64°57'20" E Two Hundred Sixty-Eight and 84/100 (268.84) feet to a point; thence

N 25°02'40" W One Hundred and 29/100 (100.29) feet to a point; thence

N 54°34'03" E Two Hundred Ninety-Seven and 61/100 (297.61) feet to a point;
thence

S 24° 50'21" E Nine Hundred Five and 46/100 (905.46) feet to the point of
beginning.

Said Lot H contains approximately Nine Hundred Fifty-Seven Thousand Five Hundred
Twenty-Seven (957,527) square feet of land, more or less, according to said plan.

For Grantor's title, see the deed to Boston Edison Company dated September 14, 1973 and
recorded with the Middlesex South Registry of Deeds in Book 12521, Page 266.

The above-described premises are conveyed subject to and with the benefit of all matters of
record insofar *as* now in force and applicable. The premises conveyed hereby do not constitute a sale
of all or substantially all of the real property of Grantor within the Commonwealth of Massachusetts,
and this conveyance is made in the ordinary course of business of Grantor. For corporate authority,
see the Assistant Clerk's Certificate and the Incumbency Certificate recorded herewith.

[PAGE ENDS HERE- SIGNATURE PAGE FOLLOWS]

WITNESS the execution hereof under seal as of the 7th day of April, 2004.

BOSTON EDISON COMPANY

By: **toga** _____
Donald Anastasia, Tts ' ssistant Treasurer
hereunto duly authorized

/1/:4/ ss.

COMMONWEALTH OF MASSACHUSETTS

April 7, 2004

Then personally appeared the above-named Donald Anastasia, as the Assistant Treasurer of Boston Edison Company and acknowledged the foregoing instrument to be the free act and deed of said corporation, before me.



Notary Public ..fize,k.,_/?

My Commission expires: 7V-ie 2.4>.ZAZ>3

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CONSERVATION RESTRICTION
TO THE
CITY OF NEWTON

1 Grantor Clause.

KESSELER DEVELOPMENT, LLC, a Massachusetts limited liability company with its principal place of business at 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter, together with successors in title or any other interest, collectively called the "Grantor"), being the owners of a certain parcel of vacant land in Newton, Middlesex County, Massachusetts, such parcel having frontage on Brookline Street and Harwich Road, and being shown as Lot H on a plan entitled "Subdivision Plan of Land in Newton, MA," dated November 26, 2003 prepared by Toomey-Munson & Associates, Inc., recorded with the Middlesex South District Registry of Deeds as _____, acting pursuant to Sections 31-33 of Chapter 184 of the General Laws of Massachusetts, grant, with Quitclaim Covenants, to the CITY OF NEWTON, Middlesex County, a Municipal Corporation in the Commonwealth of Massachusetts, acting by and through its Conservation Commission, with an address at City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts (hereinafter, with successors and permitted assigns, called the "Grantee"), in perpetuity and exclusively for conservation purposes, the following described conservation restrictions on said Lot H.

- A. A conservation restriction, all as more specifically set forth below, over a portion of said Lot H, shown more specifically on a plan entitled "Plan of Land Showing Conservation Restriction Area & Easement Area in Newton, MA," by Toomey-Munson & Associates, Inc., Civil Engineers & Land Surveyors, dated January 13, 2004, revised through 4-1-01 recorded as _____ (which restricted area is hereinafter called the "Conservation Restriction Area").

For Grantor's title, see Deed from Boston Edison Company dated April 7, 2004 and recorded with the Middlesex South District Registry of Deeds as _____

2. Purposes.

The purposes of this Conservation Restriction are to ensure that the Conservation Restriction Area will be retained, in perpetuity, predominantly in its natural and scenic condition and to prevent any use of the Conservation Restriction Area that will significantly impair or interfere with the conservation values of the Conservation Restriction Area. The intent of the Conservation Restriction Area is to preserve the wildlife habitat and protect the wetlands and floodplains associated with Saw Mill Brook and the South Branch Saw Mill Brook.

The Conservation Restriction Area consists of a total of approximately 483,657 square feet of land and contains unusual, unique or outstanding qualities the protection of which ; their predominately natural or open condition will be of benefit to the public for the following reasons:

- A. The Conservation Restriction Area has a significant amount of wildlife habitat due to its diversity of vegetation and wetland resource areas; and
- B. The Conservation Restriction Area in its undeveloped state serves to protect water quality.

Creation of this Conservation Restriction was agreed to by and between City of Newton and Cornerstone Corporation, in connection with their cooperative purchase of Kessler Woods. As designee of Cornerstone Corporation, Grantee has acquired ownership of said Lot H. This Conservation Restriction will provide permanent protections of the Conservation Restriction Area and serve to further and promote the conservation values on adjacent and neighboring parcels of land owned by the City of Newton.

3. Prohibited Acts and Uses of the Conservation Restriction Area: Exceptions.

A. Prohibited Acts and Uses of the Conservation Restriction Area.

Subject to the exceptions set forth in paragraph B below, the following acts and uses are expressly prohibited in and on the Conservation Restriction Area:

- (¹) Constructing, placing or allowing to remain any building, tennis or other gaming court, landing strip, mobile home, swimming pool, road, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, light or utility pole, satellite dish, tower, power line, conduit line, or other temporary or permanent structure on, above, or under the Conservation Restriction Area;
- (2) Mining, excavating, dredging or removing from the Conservation Restriction Area of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit in such manner as to affect the surface of said land;
- (3) Placing, filling, storing or dumping on the Conservation Restriction Area of leaves or other tree material, soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever, or the installation of underground storage tanks;
- ⁴(4) Cutting, pruning, removing or otherwise destroying trees, shrubs, grasses or other herbaceous vegetation, except in the course of good forestry management practices and only as may be necessary to preserve the present condition of the Conservation Restriction Area unless the proposed activity has the prior approval of the Conservation Commission;
- (5) Use and activities which could be detrimental to wildlife habitat values, including without limitation, site lighting illuminating the Conservation Restriction Area whether direct or indirect;

- (6) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation or archaeological conservation;
- (7) The use of motorized and non-motorized recreational vehicles, to include, *inter alia*, motorcycles, bicycles of any type, all-terrain or other off-road vehicles, scooters and snowmobiles;
- (8) The use of chemical fertilizers, herbicides, or pesticides, unless reviewed and approved by the Conservation Commission in advance and in accordance with the City's Integrated Pest Management Plan;
- (9) The use of fences; and
- (10) Any other use of the Conservation Restriction Area or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair other significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

B. Exceptions to Otherwise Prohibited Acts and Uses of the Conservation Restriction Area.

- (1) Nothing herein is intended to restrict or affect the existing easement rights held by the City of Newton and the Massachusetts Water Resources Authority.
- (2) Grantor reserves the right to install and maintain underground utilities in the Conservation Restriction Area, subject however to the prior review and approval of the Conservation Commission, which review shall include, without limitation, location of utilities, means of construction and manner of maintenance.

4. Installation of boundary markers.

Within six months following approval of this Conservation Restriction by the Massachusetts Secretary of Environmental Affairs, Grantor, at its expense, shall establish a series of permanent bounds and markers so as to mark the Conservation Restriction Area, and provide a plan signed and stamped by a Registered Land Surveyor showing the locations of said bounds and markers. The locations and types of said bounds and markers shall be as reasonably determined by the Conservation Commission.

5. Legal Remedies of the Grantee.

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation, relief requiring restoration of the Conservation Restriction Area to its condition prior to

such violation complained of (it being agreed that the Grantee may have no adequate remedy at law) and shall be in addition to and not in limitation of any other rights and remedies available to the Grantee.

B. Reimbursement of Costs of Enforcement.

The Grantor and, thereafter, their successors and assigns, covenants and agrees to reimburse the Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking measures to remedy or abate any violation thereof.

C. Grantee Disclaimer of Liability.

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Conservation Restriction Area.

D. Severability Clause.

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver.

Any forbearance or election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

F. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Conservation Restriction Area resulting from causes beyond the Grantor's control, including without limitation, fire, flood, storm and earth movement.

6. Access.

This Conservation Restriction grants the right to enter upon the Conservation Restriction Area to the Grantee and its agents and representatives at reasonable times and in a reasonable manner to inspect same to determine compliance with this Conservation Restriction. The rights of access granted hereunder are in addition to the rights granted to Grantee under an Easement Agreement dated April 7, 2004.

7. Assignability.

A. Running of the Burden with the Conservation Restriction Area.

The burdens of this Conservation Restriction granted herein is given in perpetuity and shall run with the Conservation Restriction Area and shall be enforceable against the Grantor and thereafter the successors and assigns of the Grantor holding any interest in the Conservation Restriction Area.

B. Execution of Documents.

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of themselves and their successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

C. Running of the Benefit.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time:

- (1) as a condition of any assignment, the Grantee requires and the successor or assign of the Grantee agree that the purposes of this Conservation Restriction continue to be carried out, and
- (2) the assignee, at the time of the assignment, qualifies under Section 170(b) of the Internal Revenue Code 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General- Laws of the Commonwealth of Massachusetts as an eligible donee to receive this Conservation Restriction directly, and
- (3) the Grantee complies with the provisions required by Article 97 of the Amendments to the Massachusetts State Constitution, as applicable.

8. Subsequent Transfers.

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any, deed or other legal instrument by which the Grantor conveys any interest in the Conservation Restriction area or said Lot H including without limitation, a leasehold interest.

9. Termination of Rights and Obligations.

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding any interest in the Conservation Restriction Area shall terminate upon transfer of that party's interest, except that liability

for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

10. Estoppel Certificates.

Upon request by the Grantor, or their successors and assigns, the Grantee shall within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

11. Amendment

This Conservation Restriction may be amended only by written agreement of the parties or their successors in interest. Any such amendment shall require the approval of the Secretary of Environmental Affairs or such successor agency.

12. Effective Date.

This Conservation Restriction shall be effective when it has been fully executed and it has been recorded with the Middlesex South District Registry of Deeds.

13. Miscellaneous.

A. Controlling Law.

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction.

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purpose of Section 31 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts. The provisions of Section 26 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts shall apply to this Conservation Restriction and the City of Newton shall be deemed to be a "Governmental Body" as defined therein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render such provision valid shall be favored over any interpretation that would render it invalid.

C. Pre-Existing Rights.

Approval of this Conservation Restriction by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the

existence or non-existence of any pre-existing rights of the public, if any, in and to the Conservation Restriction Area, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

D. Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

E. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

No documentary stamps are required as this Conservation Restriction is for nominal consideration, which, in any event, is less than One Hundred (\$100.00) dollars.

IN WITNESS WHEREOF, KESSELER DEVELOPMENT, LLC has signed under seal, acknowledged and delivered the foregoing instrument on this ____ day of _____, 2004.

KESSELER DEVELOPMENT, LLC

By: Cornerstone Manager, Inc.

By: _____

Its _____

Duly Authorized

-CL(COMMONWEALTH OF MASSACHUSETTS
MtnffLESEX, SS _____¹iri--(_____, 2004

On this }^{1st} day of VA_A_____, 2004, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were i.) _____, to be the person whose name is signed on the preceding document, and acknowledged that (he) (she) signed it as _____ of Cornerstone Manager, Inc., on behalf of KESSELER DEVELOPMENT, LLC, voluntarily for its stated purpose.

1C _____

NOTARY PUBLIC:

My Commission Expires: 1 2. I

ACCEPTANCE BY NEWTON CONSERVATION COMMISSION

The above Conservation Restriction is accepted this ____ day of _____, 2004.

CONSERVATION COMMISSION OF
THE CITY OF NEWTON:

_____	_____
_____	_____
_____	_____
_____	_____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS _____, 2004

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged that (he) (she) signed it as _____ of Conservation Commission of the City of Newton, voluntarily for its stated purpose.

NOTARY PUBLIC:
My Commission Expires:

APPROVAL AND ACCEPTANCE BY BOARD OF ALDERMEN
CITY OF NEWTON (GRANTEE)

I, Edward G. English, the duly appointed Clerk of the Board of Aldermen of the City of Newton, Massachusetts, hereby attest and certify that at a meeting duly held on _____ 200_, the Board of Aldermen voted to approve and accept the foregoing Conservation Restriction pursuant to M.G.L. chapter 40, Section 8C and M.G.L. Chapter 184, Section 32.

Attest: Clerk of the Board of Aldermen,
City of Newton, Massachusetts:

APPROVAL AND ACCEPTANCE BY MAYOR
CITY OF NEWTON (GRANTEE)

I, David B. Cohen, Mayor of the City of Newton, Massachusetts, hereby certify that the foregoing Conservation Restriction has been approved and accepted by the City of Newton, by and through its Conservation Commission, pursuant to M.G.L. Chapter 40, Section 8C and M.G.L. Chapter 184, Section 32.

City of Newton, Massachusetts

By:

David B. Cohen, Mayor

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS _____, 2004

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared David B. Cohen, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged that he signed it as Mayor of the City of Newton, voluntarily for its stated purpose.

NOTARY PUBLIC:

My Commission Expires:

**APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the [qualified holder] has been approved in the public interest pursuant to M.G.L. Chapter 184 Section 32.

Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, SS. _____, 2004

On this ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged that (he) (she) signed it as Secretary of Environmental Affairs of the Commonwealth of Massachusetts, voluntarily for its stated purpose.

Notary Public
My commission expires:

111



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EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is entered into *as* of the day of April, 2004, by and between GS KESSELER, LLC, a Massachusetts limited liability company with an address of do Cornerstohe Corporation, 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter, "Cornerstone"), and the CITY OF NEWTON, a municipal corporation at 1000 Commonwealth Avenue, Newton, Massachusetts 02459 (hereinafter "City").

WHEREAS, Cornerstone Corporation and City entered into a Cooperative Bidding Agreement dated June 20, 2003, as amended by Amendment #1 dated August 7, 2003 and by Amendment #2 dated August 25, 2003 and by Amendment #3 dated April 6, 2004, in connection with the property known *as* Kessler Woods (hereinafter "Kessler Woods") located in Newton, Massachusetts, consisting of Lots C, D, G, H and J on the "Subdivision Plan of Land in Newton, MA" of Kessler Woods dated November 26, 2003 prepared by Toomey-Munson & Associates, Inc. (the "Subdivision Plan") recorded with the Middlesex South Registry of deeds immediately prior hereto and designated by the Newton Board of Assessors *as* parcels 8241-22 and 82-37-3 in order to allow Cornerstone and City to purchase the Kessler Woods, and to develop some portions of Kessler Woods for residences and to maintain other portions of Kessler Woods as conservation land.

WHEREAS, the City has acquired fee ownership of the parcels of Kessler Woods situated on the southerly side of Vine Street designated as "Lot C" and "Lot D" on the Subdivision Plan, as well as the southerly portion of the northerly parcel of Kessler Woods designated as "Lot G" on the Subdivision Plan (together, the "City Parcels"), and Cornerstone, as designee of Cornerstone Corporation, has acquired fee simple ownership of Lot J on the Subdivision Plan (hereinafter the "Cornerstone Parcel").

WHEREAS, portions of the Cornerstone Parcel are constrained from development due to utility easements, flood plain restrictions, wetlands and Inner Riparian zone restrictions under the Rivers Protection Act and are otherwise intended to be made subject to certain rights in favor of the City by the terms of this Easement Agreement (hereinafter the "Easement Area"). The Easement Area is demarcated *as* the "Easement Area" on a "Plan of Land Showing Conservation (A) Restriction Area and Easement Area in Newton, MA" dated January 13, 2004, with revisions dated 2-9-04, 3-22-04 and 4-1-04 by Toomey-Munson & Associates, Inc. Civil. Engineers and (1.) Land Surveyors and ~~attachetlzbcrctccas=~~^{erthibit=}ker,2 2EZ00-1)e7) W t T H

WHEREAS, Cornerstone intends to develop the portions of the Cornerstone Parcel which are not constrained from development into residential lots.

WHEREAS, Cornerstone and City have agreed, in connection with the Cooperative Bidding Agreement, for Cornerstone to provide City with certain rights and easements over the Easement Area in order to facilitate City's purpose of maintaining the Easement Area as publicly accessible conservation land.

NOW, THEREFORE, in consideration of the respective rights and obligations of Cornerstone and City in the Cooperative Bidding Agreement and the respective rights and

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SEE PLAN IN RECORD 800

easements granted herein, the receipt and sufficiency of which are hereby acknowledged, Cornerstone and City hereby agree *as follows*:

1. Incorporation of portions of Easement Area into development residential lots.

a. Cornerstone intends, subject to the terms of a certain Development Covenants Agreement of even date between Cornerstone and the City, to develop the Cornerstone Parcel for single-family house lots (the "Residential Lots").

b. Cornerstone may incorporate portions of the Easement Area into some of the Residential Lots if necessary to meet zoning requirements, permitting requirements, or other sound development and planning considerations.

c. Cornerstone shall, however, use its best efforts to design the Residential Lots in such a manner as to minimize the amount of the Easement Area incorporated into the Residential Lots. To the extent Cornerstone must incorporate portions of the Easement Area into the Residential Lots, Cornerstone must preserve the remaining portion of the Easement Area *as* a single contiguous parcel. Those remaining portions of the Easement Area which are, pursuant to subparagraphs (a), (b), and (c), not included within any residential lot shall be referred to hereinafter as the "Residual Area."

d. The parties acknowledge that the "Easement Area" shown on Exhibit A and which is the subject of this Agreement does not include certain portions of the Cornerstone Parcel which shall be incorporated into one or more Residential Lots and which, although constrained from development by certain regulatory restrictions, are not intended to be constrained by the terms of this Easement. Notwithstanding the foregoing, nothing in this Easement shall be deemed to remove such areas from any applicable regulatory constraints, and **the** City shall continue to have all powers ordinarily associated with the use and development of such areas.

e. In obtaining any mortgage loan financing for the Cornerstone Parcel or the development thereof, Cornerstone's agreements with any mortgagees shall provide that such mortgagee shall release the lien of its mortgage from the Residual Area once such area has been identified of record, so that the Residual Area shall be free of any liens or encumbrances.

f. Upon the later to occur of (i) the conveyance by Cornerstone of the last of the subdivided Residential Lots *as* shown on the subdivision plan or plans to be prepared by Cornerstone *as* contemplated by this Section 1 or (ii) December 31, 2005, Cornerstone, at its expense, shall establish a series of permanent bounds and markers on the Residential Lots so as to mark clearly their division from the Residual Area.

g. Cornerstone shall complete its subdivision plan or plans, setting out which portions of the Easement Area will be incorporated in the Residential Lots, within ten (10) years of the date hereof.

2. Public Access Easement

a. Cornerstone hereby grants to City, with quitclaim covenants, the perpetual right and easement over and through the Easement Area for the following public purposes: (i) pedestrian and general recreational access, including access to other lands of the City (whether properties owned by the City in fee simple or with respect to which the City has similar easement rights) and (ii) general public recreational uses. The City shall have the right to limit and regulate the access and use by the public of the foregoing easement rights.

b. Cornerstone hereby grants to City the perpetual and exclusive right to plan, construct, and maintain at the City's sole cost and expense (except *as* set forth below) footpaths and trails within the Easement Area to allow pedestrian and general recreational access.

c. Cornerstone reserves to itself, its successors and assigns, the rights to continue to enter upon and use the Easement Area, so long *as* such entrance and use do not interfere with the use by the City of the Easement Area as provided for herein and the rights granted to the City hereby. With respect to the foregoing reservation, the City specifically acknowledges that temporary entrances by Cornerstone and its authorized agents upon the Easement Area for construction and maintenance of the improvements upon the Cornerstone Parcel contemplated hereby shall be permitted hereunder so long *as* they do not materially interfere with the *use* and enjoyment of the Easement Area by the City for the purposes set forth in subparagraphs (a) and (b), above.

3. Conveyance of Residual Area

a. At such time and in such manner as shall be set forth below, Cornerstone shall convey the Residual Areas to the City in consideration of the sum of one dollar (\$1.00).

b. Cornerstone shall establish the date for the conveyance of the Residual Area by giving written notice to the City at any time within six (6) months after Cornerstone shall have received approval for and shall have recorded a subdivision plan or plans for the development of the Cornerstone Parcel. Cornerstone may delay the date for the notice if and to the extent additional time is required for the approval of the subdivision plan (or "approval under subdivision control law not required" plan) required to establish the Residual Area.

c. Closing on the conveyance of the Residual Area shall occur within thirty (30) days of the date of the Cornerstone's notice to the City *as* set forth in subparagraph b, above. Cornerstone shall be responsible for having its engineers or surveyors prepare true and accurate metes and bounds description of the Residual Area and for preparing and submitting for all necessary approvals any subdivision plan (or "approval under subdivision control law not required" plan) required to establish the Residual Area. Cornerstone shall convey the foregoing by good and sufficient quitclaim deed, free of all liens and encumbrances.

4. Run with the Land. The easement and other agreements created herein shall be construed in accordance with the laws of the Commonwealth of Massachusetts shall run with the

land, and this instrument shall be binding upon and inure to the benefit of successors and assigns of the parties hereto and all persons claiming by, through or under them.

5. Conservation Restrictions. Cornerstone shall deliver to the City a perpetual restriction agreement, in form and substance satisfactory to the City and its Conservation Commission and in conformance with chapter 184 section 32 of the Massachusetts General Laws, regarding the preservation of certain restrictions and covenants regarding the use and development of the Easement Area. Nothing in this Easement shall be deemed to supplant or supersede the foregoing conservation restriction; and the granting of the conservation restriction shall not be deemed to supplant or supersede and of the provisions of this Easement.

6. Respective Rights and Obligations.

a. Nothing herein shall be construed or interpreted to mean that Cornerstone, merely by the granting of the easements and rights set forth herein, has assumed any liability for any injury or damage resulting from the City's use of the Easement Area *as* provided herein.

b. The City shall be responsible for maintaining, in its sole discretion, the Easement Area in a manner consistent with the Easement Area's use for conservation and recreation purposes.

c. Cornerstone and the City shall each be responsible for their own compliance with all applicable laws in connection with the exercise by each of them of their respective rights with regard to the Easement Area.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. Facsimiles or copies of this Agreement shall be deemed originals for all purposes.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this as an instrument under seal as of the date first above written.

C/S KESSELER, LLC

By: Cornerstone Manager, Inc.

By: 

Its ~~Pres.~~

Duly Authorized

CITY OF NEWTON

B 

David B. Cohen

Its Mayor

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS)

) ss.

COUNTY OF

April 4, 2004

On this day, before me, personally appeared the above-named DAVID B. COHEN Mayor of Cornerstone Manager, Inc., the Manager of C/S Kessler, LLC, and not individually, who acknowledged the foregoing instrument to be his/her free act and deed, in his/her capacity *as* aforesaid.



Notary Public

My Commission expires:

COMMONWEALTH OF MASSACHUSETTS)

) ss.

COUNTY OF MIDDLESEX

April 6, 2004

On this day, before me, personally appeared the above-named David B. Cohen, as Mayor of the City of Newton, and not individually, who acknowledged the foregoing instrument to be his free act and deed, in his capacity *as* aforesaid.



Notary Public

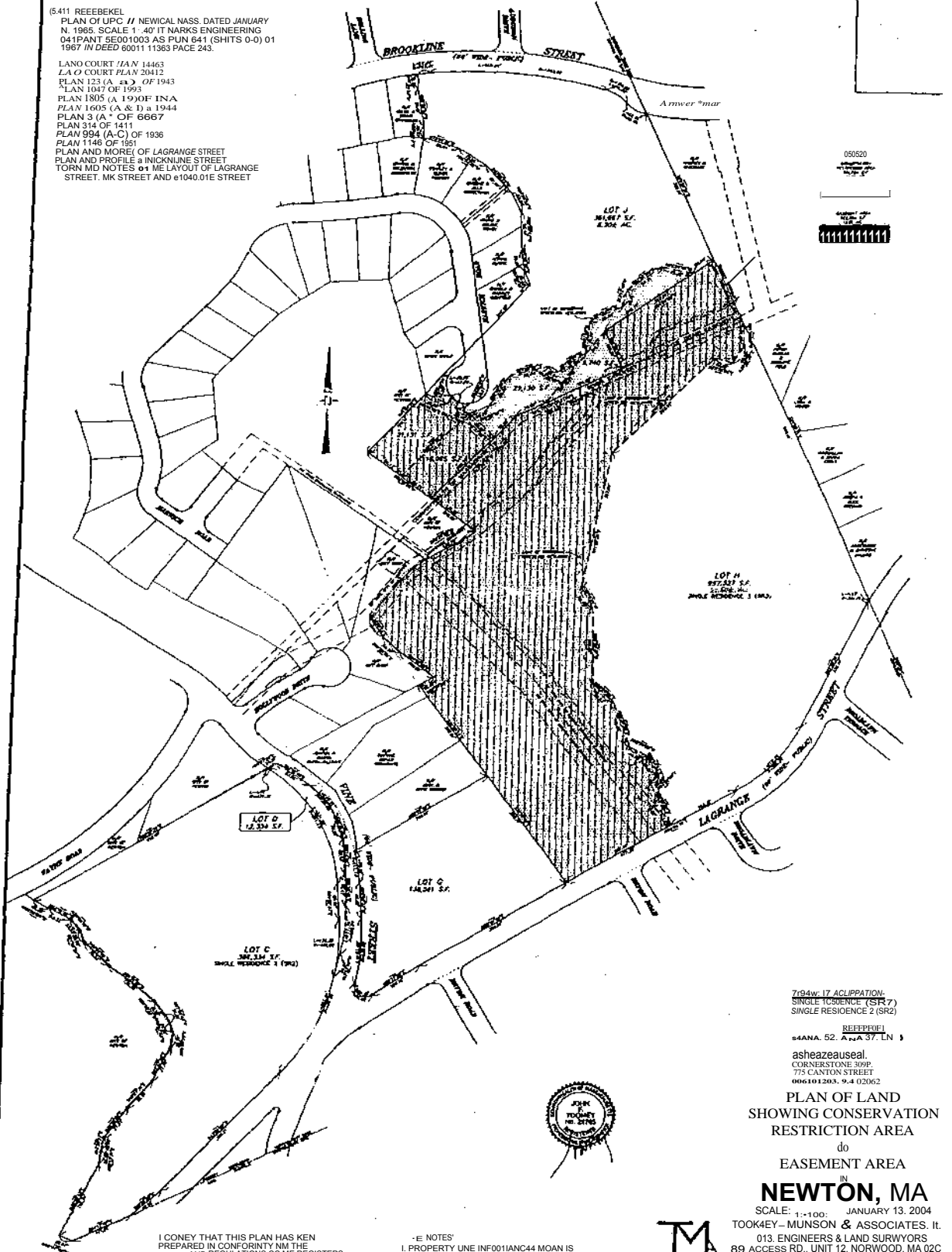
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PLAN OF LAND
SHOWING CONSERVATION
RESTRICTION AREA

do
EASEMENT AREA

IN
NEWTON, MA

SCALE: 1"=100' JANUARY 13, 2004
TOOK4EY-MUNSON & ASSOCIATES, IT.
013. ENGINEERS & LAND SURVYORS
89 ACCESS RD., UNIT 12, NORWOOD, MA 02C

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DEVELOPMENT COVENANTS AGREEMENT

This Development Covenants Agreement (the "Agreement") is entered into as of the 7th day of April, 2004, by and between (i) C/S KESSELER, LLC, a Massachusetts limited liability company and (ii) KESSELER DEVELOPMENT, LLC, a Massachusetts limited liability company, both with an address of do Cornerstone Corporation, 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter, together, "Cornerstone"), and the CITY OF NEWTON, a municipal corporation at 1000 Commonwealth Avenue, Newton, Massachusetts 02459 (hereinafter "City").

WHEREAS, Cornerstone Corporation, a Massachusetts corporation, and City entered into a Cooperative Bidding Agreement dated June 20, 2003, as amended by Amendment #1 dated August 7, 2003 and by Amendment #2 dated August 25, 2003 and by Amendment #3 dated April 7, 2004 (together, the "Cooperative Bidding Agreement") in connection with the property known as Kessler Woods, located in Newton, Massachusetts and designated by the Newton Board of Assessors as parcels 82-41-22 and 82-37-3 (hereinafter "Kessler Woods") in order to purchase Kessler Woods and develop some portions of Kessler Woods for residences and maintain other portions of Kessler Woods as conservation land.

WHEREAS, the City has acquired fee ownership of the parcel of Kessler Woods situated on the southerly side of Vine Street designated as "Lot C" and "Lot D" on the "Subdivision Plan of Land in Newton, MA" of Kessler Woods dated November 26, 2003 prepared by Toomey-Munson & Associates, Inc. (the "Subdivision Plan") recorded with the Middlesex South Registry of deeds immediately prior hereto, *as* well as the southerly portion of the northerly parcel of Kessler Woods designated *as* "Lot G" on the Subdivision Plan (together, the "City Parcels"), and Cornerstone, *as* the designee of Cornerstone Corporation, has acquired fee simple ownership of the remainder of the northerly parcel of Kessler Woods, designated as Lot H and Lot J on the Subdivision Plan (hereinafter the "Cornerstone Parcels").

WHEREAS, Cornerstone intends to develop the Cornerstone Parcels for residential purposes.

WHEREAS, Cornerstone and City have agreed, in connection with the Cooperative Bidding Agreement, for Cornerstone to develop the Cornerstone Parcel subject to certain constraints and covenants for the benefit of the City.

NOW, THEREFORE, in consideration of the respective rights and obligations of Cornerstone and City in the Cooperative Bidding Agreement and the respective rights and agreements granted herein, the receipt and sufficiency of which are hereby acknowledged, Cornerstone hereby agrees as follows with respect to the development of the Cornerstone Parcels for the benefit of the City Parcels:

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SEE PLAN IN RECORD BOOK 2004 PAG

1. Development Limitations

a. Cornerstone intends to develop the Cornerstone Parcels for single-family houses and/or residential units (in the aggregate the "Residential Units," and the parcels of land on which they shall be located, the "Residential Lots").

b. With respect to Lot J of the Cornerstone Parcels, Cornerstone shall limit the development of this Lot to no more than fourteen (14) single-family house lots, but which may include up to three (3) rear lots within the meaning of Section 30-15(b)(4) of the Zoning Ordinances of the City of Newton and up to two (2) lots off Harwich Road; provided that the total number of lots shall not exceed 14. Cornerstone will impose upon all the house lots on Lot J a uniform set of design covenants and restrictions which shall be binding upon Cornerstone and any third-party builders of the houses and upon the homeowners. Cornerstone shall, prior to recording or otherwise imposing such uniform covenants and restrictions, first submit to a designated representative of the City (who may be the Mayor of the City or the City official or City department designated by the Mayor), who shall be afforded the opportunity by Cornerstone to have reasonable review of and comment on the proposed covenants and restrictions. At the request of Cornerstone, the City shall execute and deliver to Cornerstone a certification, in recordable form, as to Cornerstone's compliance with the covenants and restrictions set forth herein and in the Cooperative Bidding Agreement which can be relied upon by third-parties, including, as applicable, a certificate of final compliance.

c. With respect to Lot H of the Cornerstone Parcels, Cornerstone shall limit the development of this Lot to no more than eighty (80) residential units or eighty (80) single-family house lots. In either case, not less than twenty (20%) percent of all such units and/or house lots shall be Inclusionary Units within the meaning of Section 30-24(f) of the Newton zoning ordinances. Upon application by Cornerstone to the City and submission of evidence to the City that it is not economically feasible for Cornerstone, notwithstanding the use of its best efforts, to provide at least 20% Inclusionary Units, the City, in its reasonable discretion, shall agree to a lesser number of Inclusionary Units, in which case, the parties shall enter into and record an amendment to this Agreement to evidence such revision.

d. In addition to the standards and restriction set forth in subparagraph (c), above, Cornerstone shall, with respect to Lot H, comply with certain other design and development criteria, including, without limitation, the development of the Cornerstone Parcels pursuant to a "Preferred Plan," in accordance with the Cooperative Bidding Agreement, a true copy of which shall be kept with the records of the City Clerk of the City. At the request of Cornerstone, the City shall execute and deliver to Cornerstone a certification, in recordable form, as to Cornerstone's compliance with the covenants and restrictions set forth herein and in the Cooperative Bidding Agreement which can be relied upon by third-parties, including, as applicable, a certificate of final compliance.

2. Right of First Refusal. If Cornerstone shall propose to sell to any bona fide third party purchaser any portion of a Cornerstone Parcel other than as a Residential Lot or for the development of Residential Units, Cornerstone shall so notify the City of its intention to do so

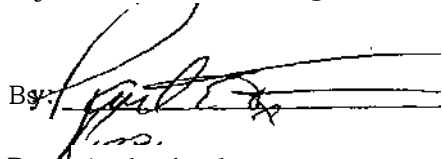
and the price which such third party purchaser proposes to pay for the property in question. The City shall have sixty (60) days within which to notify Cornerstone of the City's intention to exercise this right of first refusal to purchase that portion at the price offered by the third party purchaser; whereupon Cornerstone and the City shall close on the sale of the property in question within one hundred eighty (180) days of the date of Cornerstone's receipt of the foregoing notice from the City. The City's failure to exercise its rights with respect to any one offered property shall not preclude the City's rights with respect to any other portion of the Cornerstone Parcel; and, if the City shall have failed to exercise its rights with respect to a particular portion of the Cornerstone Parcel and Cornerstone shall subsequently fail to close on the sale of such property on substantially the terms set forth in Cornerstone's notice to the City within one hundred eighty (180) days of the City's failure to exercise its right of first refusal, the City's right of first refusal shall be deemed to have been reinstated with respect to the property in question. The City shall, at Cornerstone's request, issue to Cornerstone or for the benefit of the third party purchaser, or such other purchaser of a Residential Lot or Residential Units an estoppel certificate in recordable form which can be used at the closing with such purchaser to clear title of the terms and conditions of this right of first refusal with respect to such Residential Lot or Residential Unit. The City shall have the right and power to assign the foregoing right of first refusal by written notice to Cornerstone.

3. Run with the Land. The restrictions, covenants and other agreements created herein shall be construed in accordance with the laws of the Commonwealth of Massachusetts shall run with the land, and this instrument shall be binding upon and inure to the benefit of successors and assigns of the parties hereto and all persons claiming by, through or under them.

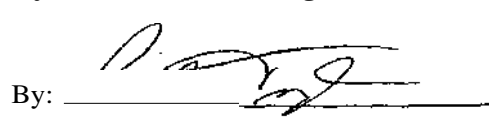
4. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. Facsimiles or copies of this Agreement shall be deemed originals for all purposes..

IN WITNESS WHEREOF, the parties have executed this as an instrument under seal as of the date first above written.

C/S KESSELER, LLC
By: Corse e Manager, Inc.

By: 
Duly Authorized

KESSELER DEVELOPMENT, LLC
By: Cornerstone Manager, Inc.

By: 
Its
Duly Authorized

ACCEPTED AND AGREED TO:

CITY OF NEWTON

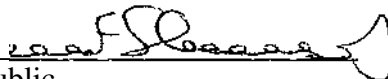
By. **ft.**
David B. Cohen, Mayor
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Suos: Lie--
COUNTY OF Mf1313L-ESEX, ss.

April , 2004

On this day, before me, personally appeared the above-named LA t1- T4-7 rtk.r
as _____ of Cornerstone Manager, Inc. and not individually, who acknowledged the
foregoing Development Covenants Agreement to be his/her free act and deed, in his/her capacity
as aforesaid, on behalf of C/S KESSELER, LLC.



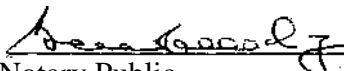
Notary Public
My Commission expires: t -0 y

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF t4-1-1;L-E&E-X, ss.

April 2004

On this day, before me, personally appeared the above-named P.A...A E
as Q of Cornerstone Manager, Inc. and not individually, who acknowledged the
foregoing Development Covenants Agreement to be his/her free act and deed, in his/her capacity
as aforesaid, on behalf of KESSELER DEVELOPMENT, LLC.



Notary Public
My Commission expires: L -

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

April 6, 2004

On this day, before me, personally appeared the above-named David B. Cohen, as Mayor
of the City of Newton, who acknowledged the foregoing Development Covenants Agreement to
be his/her free act and deed, in his capacity as aforesaid, on behalf of the City of Newton.

otary Pu _____,
My Commission expires:



David B. Cohen, Mayor

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Zoning Review Memorandum

Dt: November 29, 2005

To: Mr. Bernard F. Shadrawy, Jr. representing Cornerstone Corporation

Fr: Juris Alksnitis, Chief Zoning Code Official 

Cc: Michael Kruse, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services

Re: **Development of "Kessler Woods", Lot H-1 with a multifamily dwelling containing 49 units and three attached dwelling structures containing 13 units.**

Applicant(s): Cornerstone Corporation

Site: LaGrange St.	SBL: Section 82, Block 37, Lot 03 (H-1)
Zoning: SR-3 (rezoning to MR3 proposed)	Lot Area: 640,847 sq. ft.
Current use: Vacant	Prop. use: Multi-family and att du

Background:

The subject lot is located within a new subdivision created as part of an overall plan to develop a part of the former Edison land, aka Kessler Woods, per subdivision plans titled "Subdivision Plan of Land in Newton, MA" dated April 28, 2004, with Approval not Required Endorsement dated May 14, 2004 and recorded January 26, 2005. This area is also subject to certain additional restrictions and agreements noted in the References section below. A preliminary subdivision plan dated March 5, 2004 submitted by the then owner of the property Boston Edison Co., contemplated three subdivisions utilizing the entire "Kessler Woods" property for the development of 68 single family homes. The City and the applicant agreed to work together per the Cooperative Bidding Agreement Regarding Kessler Woods Property, and following a complex bidding process held by Boston Edison, became owners of various portions of the Kessler Woods property. At this time, single family development is proceeding at the Kessler Way subdivision (11 lots) while lot H-1, comprising a reduced portion of the main lot (previously lot H), is proposed for development under revised plans. The applicant proposes a multi-family and attached dwelling unit development containing 62 units, and has indicated that a further amendment to the Cooperative Bidding Agreement has been requested to accommodate this change. The applicant proposes to develop H-1 with a 3.5 story multifamily dwelling containing 49 dwellings with adjacent patio and pool area, and a 101 parking space facility and fitness center on the garage level, along with three single-family attached dwelling structures containing 13 attached dwelling units located along the perimeter roadway. In order to implement this development, several key actions will be required as follows:

- Amendment of Section 30-15, Table 1 to allow multi-family structures exceeding 3 stories and 36 ft.

- Rezoning of parcel H-1 from SR3 to MR3
- Special permit and site plan approval for multi-family and attached dwelling unit development and related zoning relief, to the extent necessary.

At the suggestion of the City, the applicant will submit concurrent petitions reflecting each of the above actions. As the zoning text amendment and also the rezoning proposal will be subject to separate Planning Department analysis, the following review will focus on the special permit petition for the proposed multifamily and attached dwelling unit development.

Administrative determinations

1. While the proposed development is not allowed under the current SR-3 zone, the applicant has requested review based on proposed changes to the zoning ordinance and the rezoning of the subject parcel from SR-3 to MR-3 on the zoning map. Both attached dwellings and multifamily dwellings require a special permit in the MR-3 zone pursuant to Section 30-9(b) and (d) and Section 30-23 and 30-24(d).
2. Section 30-15, Table 1, *Density and Dimensional Controls in Residence Districts and for Residential Uses* sets forth the applicable standards pertaining to attached dwelling units and multifamily development in the MR-3 zone. The proposed attached dwelling units meet the applicable requirements. The proposed multifamily structure meets the applicable requirements except for height and story count. Submitted plans indicate the height will be 46.75 ft. exceeding the current 36 ft. maximum while stories will be 3.5 stories, exceeding the current maximum of 3 stories. The petitionw proposes a concurrent amendment to the Zoning Ordinance, Table 1, by adding a new footnote which would allow additional height up to 48 ft. and up to 4 stories, subject to certain requirements including a minimum site area of 10 acres, minimum setback of 150 ft. and minimum setback to abutting properties of 75 ft. The proposed text amendment will be considered under a separate petition before the Board of Aldermen.
3. Section 30-15(p) requires a Build Factor (BF) not exceeding 20 for new lots created in the SR3 and MR zones after September 16, 1996. While the BF calculation supplied by the applicant needs correction as to the figure used for minimum required lot area (should be 110,800 sq. ft. $[49 \times 1,200 + 13 \times 4000]$), the outcome nevertheless meets the above-referenced maximum.
4. Section 30-19(d)(2) *Number of Parking Stalls* requires two parking spaces per dwelling unit for attached dwelling units and multifamily developments, totaling 124 spaces for the proposed 62 units. Submitted plans indicate 18 surface spaces, including two handicapped spaces, 24 spaces within garages of town houses, and 101 spaces, including three handicapped spaces within the basement garage of the multifamily structure, totaling 143 spaces. While the overall total exceeds the required number of spaces, it is noted that townhouse building C provides 10 garaged spaces for 12 units and appears to be short two spaces. Should the petitioner wish to utilize driveway area to "stack" spaces adjacent to single-stall garages, the applicant needs to identify such spaces on plan and seek approval of the Board of Aldermen pursuant to Section 30-19(m). In addition, while the garage level provides 3 HP spaces, 4 HP spaces are required per Section 30-19(h)(2)c), necessitating the

creation of another HP space to serve the residents of this building. It is also noted that a number of surface parking spaces and spaces within the main garage appear to be smaller than required by dimensional standards, as discussed below.

5. Section 30-9(b)(5)a) establishes certain setback requirements pertaining to parking for attached dwellings and 30-19(h) establishes the applicable design and layout requirements for parking facilities of the size proposed by submitted plans. While proposed parking plans meet applicable setback requirements, a number of parking spaces appear to vary from standard dimensional requirements. Spaces, including HP spaces, are too short at the front circle, the dumpster area, and at the pool parking area. All parking spaces should be dimensioned on plans and verified as meeting minimum dimensions. Alternatively, the applicant should identify any proposed undersize spaces and may request approval of dimensional waivers per Section 30-19(m). Also, there is no easily accessible curb cut serving the HP space at the front circle and providing a direct route to the main entrance. At present, a HP person would need to detour out to the main drive in order to get to the curb cut. This condition needs to be corrected.

In addition, it is noted that a significant number of spaces within the main garage appear to be narrower than minimum required width, and one space is non-compliant due to the protrusion of a corner wall into the space. These spaces should be increased to standard size or the applicant may seek dimensional waivers per Section 30-19(m) for specific undersize spaces, which need to be identified on plans. Maneuvering space at end stalls located in the north and south wings do not meet Section 30-19(h)(2)e) dimensional requirements and need to be corrected.

6. Section 30-19(i) and (j) establish the applicable landscaping, and lighting requirements, respectively. While submitted plans meet landscaping requirements, as numerous trees will be removed, the applicant must ensure that all applicable requirements of the Tree Ordinance are satisfied. In addition, the photometric plan indicates light spillover at the intersection of the entrance drive and LaGrange St. This will necessitate adjustment of the illumination at this location or a request by the petitioner for a waiver of Section 30-19(j)(1)b) pursuant to Section 30-19(m). In addition, the applicant should review proposed lighting for compliance with the provisions of Ordinance X-142 pertaining to light pollution and light trespass, and ensure that lighting meets these requirements.
7. Section 30-19(k), and (l) establish the bicycle parking and off-street loading requirements, respectively. Although proposed plans provide sufficient bicycle parking stalls, these are not located near the main entrance or within view of pedestrian traffic as required by Section 30-19(k)(2), but are placed at two locations within the basement garage level. Should the applicant wish to retain the proposed locations, this will necessitate a request for waiver per Section 30-19(m). Section 30-19(1), off-street loading requirements, do not apply to this project.
8. Section 30-24(f), *Inclusionary Zoning*, establishes the requirements pertaining to affordable units in developments of this size. The proposed development provides 12, or 20% affordable units, which exceeds the 15% minimum required per this section. However, as noted in the memorandum from Steve Gartrell, Director for Housing and Community

Development to Tom Southworth, Cornerstone Corp., dated November 28, 2005, the petitioner's Inclusionary Housing Plan (IHP), does not in all respects meet the *Guidelines for Inclusionary Housing Plans*. In order to satisfy Section 30-24(0, the applicant needs to respond to and remedy concerns outlined in the above-referenced memorandum. This includes matters such as confirmation of distribution of affordable units consistent with applicable income eligibility thresholds, description of affordable units per Section 30-24(f)(8)a sufficient to enable determination whether the affordable units meet Section 30-24(f)(6) design and construction requirements and Section 30-24(0(7) habitable space requirements, clarification of the procedure for determining preliminary sales price of homebuyer units, and certain corrections to the Marketing and Resident Selection Plan. The City needs to receive an IHP, which meets the above-referenced *Guidelines* and addresses any outstanding concerns as noted above. When a complete and fully compliant IHP is received, the City will then forward it to the Newton Housing Authority for its review.

In addition, Robert Engler, Chairman of the Newton Housing Partnership (NHP) conveyed a number of questions and concerns pertaining to the proposed affordable units by letter dated November 23, 2005 to Tom Southworth. These matters included: condominium dues, distribution of affordable units, lack of handicapped units, range of affordability, and income eligibility asset test. In addition, a subcommittee of the NHP will be reviewing the Inclusionary Housing Plan referenced above. The applicant should be prepared to respond to the matters identified by the NHP in relation to any issues affecting compliance with Section 30-24(0.

9. The site is subject to two 100-ft. wetland buffer,,zones from Sawmill Brook East Branch, and Sawmill Brook, respectively. The applicant is responsible for meeting all applicable wetland area preservation requirements, and for following all applicable procedures as required by the Newton Conservation Commission.

10. No information as to signage has been submitted. The petitioner is responsible for meeting the sign permitting requirements as established in Section 30-20, *Signs and Other Advertising Devices*.

- 11.The submitted plans require zoning relief as outlined in the "Zoning Relief Summary" below.

Zoning Relief Summary

Ordinance	Action Required
vialsommeja9(b)(5) 30-24	Us Approval single family attached dwellings, in one or more groups, in the MR-3 zone.
0-9(d)(1) 30-24	Approval of multifamily building in the MR-3 zone.
30-15, Table 1 30-24	Approval of multifamily building having three and a half stories in the MR-3 zone. Applies if Board of Aldermen approve proposed amendment to Table 1 footnote allowing more than 3 stories subject to special permit. X

Ordinance	Zoning Relief Summary (cont.)	Action Required
30-15, Table 1 30-24	Approval of multifamily building 46 ft. 9 in. in height in the MR-3 zone. Applies if Board of Aldermen approve proposed amendment to Table 1 footnote allowing height over 36 ft. subject to special permit.	X
30-24(f)	Applicant must comply with all applicable requirements.	See below
30-19(m) 30-19(h)(2)a & b)	Approval to reduce parking stall dimensions from 9 ft. x 19 ft. to lesser dimensions (to be defined) at selected external locations to be identified by the petitioner.	TBD*
30-19(m) 30-19(h)(2)a & b)	Approval to reduce parking stall dimensions from 9 ft. x 19 ft. to lesser dimensions (to be defined) within basement parking garage at selected locations to be identified by the petitioner.	TBD*
30-19(h)(5)a	Approval for two parking spaces to be located within Town	TBD*
30-19(j)(1)b	Approval of waiver to allow placement of 14 bicycle spaces in garage level instead of near the main entrance.	
30-20(1)	Approval of waiver to allow placement of 14 bicycle spaces in garage level instead of near the main entrance.	
30-23	Approval of site plan for development of 49 multifamily and 13 attached dwelling units, including internal and exterior parking.	
30-23	Approval of lighting plan.	
30-23	Approval of landscape plan.	
30-24(d)	Approval of special permit for proposed combined multifamily and attached dwelling unit development	

*TBD = To be determined; additional info. needed.

Ordinance	Compliance with Affordable Housing Requirements	Complies
30-24(f)	Inclusionary Housing Plan meets <i>Guidelines for Inclusionary Housing Plans</i> .	No
30-24(1)(a) & (b)iv)	Inclusionary Housing Plan meets unit distribution requirements associated with eligibility income levels related to 80% and 120% of median income categories.	TBD*
30-24(f)(1)(b)(ii)	Inclusionary Housing Plan provides acceptable procedure for determining elimination of homebuyer units.	No

<i>Comp Ordinance</i>	<i>with Affordable Housing Requirements (cont.)</i>	<i>Complies</i>
30-24(f)(3)	Proposed development dedicates 15% or higher % of total units for use as affordable units.	Yes
30-24(0(6),(7) & (8)a)	Inclusionary Housing Plan provides sufficient information evidencing units comply with applicable design and construction standards, and habitable space requirements	No
30-24(0(8)b), c) & d)	Marketing and Resident Selection Plan complies with applicable requirements.	TBD*
30-24(0(8)e)(i)	Inclusionary Housing Plan provides for a restrictive covenant limiting the initial sale and subsequent resale of affordable units to eligible households.	Yes

*TBD = To be determined; additional info. needed.

References

- Conservation Restriction to the City of Newton, April 7, 2004
- Easement Agreement between C/S Kessler, LLC and the City pertaining to access to conservation areas.
- Development Covenants Agreement, April 7, 2004
- Cooperative Bidding Agreement Regarding Kessler Woods Property, with Amendments #1 and #2.
- Letter from R. Engler, Chairman, Newton Housing Partnership to T. Southworth, Nov. 23, 2005
- Memorandum from S. Gartrell, Director for Housing and Community Development to T. Southworth, November 28, 2005.

Plans reviewed:

Plan set titled "Kessler Woods Condominiums, Newton, MA", dated October 20, 2005, prepared by H.W. Moore Associates, Inc., Engineers & Planners, 112 Shawmut Ave., Boston, MA 02118, bearing no stamp or signature of a registered professional:

- Sheet 1 of 9 – Cover Sheet
- Sheet 2 of 9 – Existing Conditions Plan of Land,
- Sheet 3 of 9 – Site Grading & Utility Plan,
- Sheet 4 of 9 – Grading Change Plan
- Sheet 5 of 9 – Site Plan & Building Setback Plan
- Sheet 6 of 9 – Drain/Sewer Schedules & Site Details
- Sheets 7 & 8 of 9 – Site Details
- Sheet 9 of 9 – Sewer Profile

Plan set titled "Kessler Woods Condominiums, Newton, MA", dated October 20, 2005, prepared by The Architectural Team, Inc., 50 Commandant's Way, Chelsea, MA 02150 including the following. These plans bear neither stamp nor signature of a registered professional:

- Sheet T1.01 – Title Sheet
- Sheet A1.00 – Building A Garage Floor Plan
- Sheet A1.01 – Building A First Floor Plan
- Sheet A1.02 – Building A Second Floor Plan
- Sheet A1.03 – Building A Third Floor Plan
- Sheet A1.04 – Building A Fourth Floor Plan
- Sheet A1.05 – Building A Roof Plan

- Sheet A2.01 — Building B Floor Plans
- Sheet A2.02 & .03 — Building C Floor Plans
- Sheet A2.04 — Building D Floor Plans
- Sheet A4.01 & .02 — Building A Elevations
- Sheet A4.03 — Building B, C & D Elevations
- Sheet A5.01 — Graphic Site Sections
- Sheet A5.02 — Story & Height Calculation Building A
- Sheet A5.03 — Story & Height Calculation Buildings B, C, and D
- Sheet A6.01 — Perspective Views

Plan titled "Kessler Woods. Condominiums, Newton, MA — Landscape Plan", Sheet 1 of 2, dated August 26, 2005, last revised October 20, 2005. While author is indicated, plan is stamped, but not signed by Jay M. Berkson, Registered Landscape Architect.

Plan titled "Kessler Woods Condominiums, Newton, MA — Lighting Plan/Photometric Plan", Sheet 2 of 2, dated October 20, 2005, prepared by Mary Smith Associates, Landscape Architects and Planners, 30 Chestnut St., Quincy, MA 02169.

Plan titled "Subdivision Plan of Land in Newton, MA", dated April 28, 2004, prepared by Toomey — Munson & Associates, Inc. Civil Engineers & Land Surveyors, 9 Access Rd., Unit 12, Norwood, MA 02062, stamped and signed by John F. Toomey, Registered Professional Land Surveyor.

**City of Newton
Massachusetts**

MEMORANDUM

To: Tom Southworth, Cornerstone Corp.

From: Trisha Kenyon Guditz, Housing Development Coordinator
Steve Gartrell, Assoc. Director for Housing and Community Development

Re: Inclusionary Housing Plan Review - **Condominiums at Kessler Woods**

Date: March 9, 2006

We have received and reviewed the March 2, 2006, draft Inclusionary Housing Plan for the **Condominiums at Kessler Woods** project. Thanks for making many of the changes recommended in our February 23, 2006 memo. However, a number of changes have yet to be made before the Planning and Development Department (PDD) can certify the Inclusionary Housing Plan as compliant.

It is the intent of the PDD to ensure that all Inclusionary Units, available to households at no more than 80% of Area Median Income, meet the requirements of the Massachusetts Department of Housing and Community Development (DHCD) and qualify for inclusion on the 40B Subsidized Housing Inventory, so many of the comments below are based on this premise.

1. **Description of the Inclusionary Units** (Section 4 in the PDD's *Guidelines for Inclusionary Housing Plans* and Inclusionary Zoning Ordinance Section 30-24(f)(6), (7) & (8)(a))

In general, this section meets the requirements of the Inclusionary Zoning (IZ) Ordinance and Guidelines with the following exceptions.

On page 2: the list and/or the plan of the 12 IZ units should have designated which are 80% units, which 120% units and which are 150%/0 units. However, four units were designated as 150% units, when it should be three units. Please change the designation of one of the 150% units to 120%.

On page 6: under *General Information on Affordable Units*, the following changes should be made :

5. *Condo Fees*. The developer must state the methodology used to develop the condo fees for the 80% Inclusionary Zoning units. The proposed fee(s) will be in effect when

the units are marketed. The proposed methodology should also demonstrate what the projected condo fees would be currently.

A new #6 should be added:

6. Inclusionary Units shall be completed no later than completion of the developer's market rate units. If any Inclusionary Units are not completed when all market rate units are completed, temporary and final occupancy permits shall not be granted by the City for the number of equivalent bedroom-sized market units equal to the number of Inclusionary Units that have not been completed. Occupancy permits for these market rate units may be granted on a one-for-one basis when the equivalent Inclusionary Units are completed and occupancy permits for them have been issued.

2. Determination of Income Eligibility (Section 5 & Section 30-24(f)(1)(a) & (b)(iv))

In general, this section meets the requirements of the IZ Ordinance and Guidelines with the following exceptions:

In Section B. 1., *Income and Asset* new income limits have been posted by HUD. The new limits are listed below.

2006-2007 Income Limits

Number In Family	Moderate Income 80% of AMI	120% of AMI	150% of AMI
2	\$53,857	\$80,785	\$100,981
3	\$60,528	\$90,791	\$113,489
4	\$67,280	\$100,920	\$126,150
5	\$72,649	\$108,974	\$136,218

In order for the 80% units to be counted on DHCD's 40B Subsidized Housing Inventory, it is necessary for the developer to reduce the asset limits for those units.

For the IZ (80%) units, the language should read:

In addition, the total value of all of the assets of the applicant and all other members of the applicant's household over the age of eighteen (18) cannot exceed \$50,000, unless at least one member of the household is over the age of sixty-two (62) and that household is selling a house to buy the unit, in which case the asset limit is \$100,000.

For the IZ (120%) units the language may read:

In addition, the total value of all of the assets of the applicant and all other members of the applicant's household over the age of eighteen (18) cannot exceed \$100,000

(excluding the first \$10,000 in vehicle value and the first \$30,000 in retirement savings accounts).

The higher asset limits listed may be used for the 150% units.

3. Sale Price of Homebuyer Units (Section 6 & Section 30-24(f)(1)(b)(ii))

With a condo fee of \$215/mo. the projected sales prices would be \$167,900 (80% units), \$311,000 (120% units) and \$396,900 (150% units). Note comments on condo fees made previously. The project sales prices should be updated accordingly

4. Marketing and Resident Selection. Plan (Section 8 & Section 30-24(f)(8)(b), (c)&(d))

Section A., *Marketing*, meets the requirements of the Ordinance and *Guidelines*. The first sentence should be changed to " . . . marketing materials to the City's active database . . .

In Section B, *Buyer Selection Priorities*, Under the *Preference Criteria* paragraph, the language of the first paragraph should be revised to read (change in bold) " . . . affordable Local Preference Units will be available for purchase only by eligible applicants who also meet one or more of the "Newton Connection" preference criteria described below, **as supplemented by the Fair Housing requirements in the *Guidelines*, Section 10.**"

Section D, *Buyer Selection Process*, in sections 1 & 6, the term "Section 8 Regulations at 24 CFR 5.609." should be changed to "U.S. Dept. of HUD regulations at 24 CFR 5.609."

On page 11, the *Lottery Administration* section should be changed to read: "The Lottery Agent agrees to conduct the lottery in a manner consistent with the content of this plan and with the **Guidelines for Inclusionary Housing Plans**, issued by the Newton Planning and Development Dept., Sections 10 and 11, and in a timely manner. Any proposed changes to the plan or process require review and approval by the PDD."

The Planning Department has decided that it will be responsible for oversight of the resale of the affordable units, therefore the *Resale Services Fee* section should be changed to read: **"The City, or its designated agent, shall be responsible for the oversight of the resale of affordable units. The City or its agent may impose a 2.5% fee contingent on the sales price of the resale unit(s) to cover the cost of marketing and the lottery for the resale. The restrictive covenant for each affordable unit shall reflect this requirement."**

In Section H, *Restrictive Covenant*, the last sentence (following) shall be deleted: "All units bought by the city shall not be rented and must be sold to a person or persons meeting these (HI) regulations and the established sale price." You could replace that sentence with the following: "It is the City's intent to resell any such unit as quickly as possible. However, the City reserves the right to rent these units in the interim, if necessary, until the unit can be sold."

**CITY OF NEWTON
ENGINEERING DIVISION**

MEMORANDUM

To: Ald. George Mansfield, Land Use Committee Chair.

From: John Daghlion, Associate City Engineer

Re: Special Permit — Kessler Woods Condominiums

Date: March 10, 2006

CC: Lou Taverna, PE City Engineer (via email)
Nancy Radzevich, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Jean Fulkerson, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

Kessler Woods Condominiums
Newton, MA
Prepared by: H.W. Moore Associates, Inc.
Dated: January 31, 2006

Drainage:

1. A peer review of the proposed stormwater analysis will be provided via separate cover.
2. An on site soil evaluation needs to be performed to verify the assumptions of the drainage study; and to obtain the seasonal high groundwater elevation, percolation rate in accordance to Title V. The proposed drainage system shall be within (20') of the test pit. The proposed drainage system should be 2' above the seasonal high groundwater elevation.
3. The runoff from the two proposed catch basins at the driveway entrance need to be infiltrated on site to the maximum extent; if the soils are not conducive to infiltrating, then there may be an overflow connection to the City's drainage system.

4. The dry well detail needs to specify the elevation of the bottom of the stone, bottom of the dry well structure, and depth to groundwater table need to be labeled. The detail needs to specify a layer of filter fabric plus a 3" layer of peastone on top of the system, and then covered over with filter fabric.
5. The engineer of record needs to submit recharge and total suspended solids (TSS) calculations as described in the MA DEP Stormwater Management Plan.
6. The certified reports prepared by a Professional Engineer of the quarterly inspections of the drainage system shall be submitted to the Commissioner of Public Works.
7. The ownership, operation, and maintenance of the proposed drainage system and all appurtenances shall be sole responsibility of the condominium association in perpetuity.
8. A monetary fund needs to be established by the developer and placed in control of the homeowners association to ensure that the annual inspections and maintenance are performed by qualified personnel. The inspections shall be witnessed by a representative of the Engineering Division of the Department of Public Works.

Water:

1. The applicant will be required to file a request for an extension of the proposed water main in Lagrange Street with the Board of Alderman's Public Facilities Committee prior to construction.
2. An additional gate valve will be required at the intersection of Lagrange Street and Broadlawn Park where the proposed 8" main will be extended and connected to the exist 6" main in Broadlawn Park.
3. Final locations of the proposed fire hydrants will require the approval of the Newton Fire Department.
4. Fire flow testing will be required for the design of the fire suppression system; this test must be coordinated and witnessed by the Newton Fire Department, and the Utilities Division. 48 hours advanced notice shall be given to the Director of Utilities and the Fire Department for this test.
5. Hydraulic calculation for the design of the [fire] sprinkler system shall be submitted to the Newton Fire Department.
6. The final configuration of the water main shall be reviewed by the Utilities Director prior to the issuance of a Utility Connection Permit.

7. The proposed water main shall be witnessed, installed, and tested in accordance to the City of Newton's Construction Standards.

Easement:

- A utility easement will be required for the proposed water main extension. The plan and easement documentation shall be submitted to the Engineering Division prior to it being recorded at the Middlesex Registry of Deeds and filed with the City Clerk's Office.

Sewer:

1. The applicant will be required to file a request for an extension of the proposed sewer main in Lagrange Street with the Board of Alderman's Public Facilities Committee prior to construction.
2. The end of the line sewer manhole shall be relocated to the last service connections.
3. The sewer service, main, and proposed manholes shall be pressure tested and witnessed by the Engineering Division. 48 hours notice shall be given to the Engineering Division [617-796-1020] prior to the day of the testing.
4. The soil borings will be required for the proposed sewer manhole locations.
5. If the subdivision is approved the applicant will have to apply for a Utilities Connection Permit with the DPW.

Construction Management Plan (CMP):

1. A Traffic Mitigation plan is needed during the installation of utilities within Lagrange Street. The plan shall be submitted to the City Traffic Engineer for approval prior to any construction.
2. The proposed CMP did not address where the delivery of materials, stock pile of materials and supplies, parking of construction employees vehicles, construction equipment, hours of operation.
3. A stabilized construction entrance/exit is needed at the proposed driveway.

4. Should the development be approved, prior to any construction activity the developer/applicant/contractor shall retain a qualified contractor that specializes in Closed Circuit Television (CCTV) inspections of the underground pipes. The CCTV inspection shall be performed on the existing 12" reinforced concrete drain pipe before and after construction and witnessed by a representative of the Engineering Division. The video tapes shall be given to the representative of the Engineering Division at the end of each inspection.
5. The City will require a temporary truck tire wash basin. This will have to be located on the vacant lot approved the City Engineer, a temporary water service will have to be installed and a 3" crushed stone base 12" in depth and wide enough for dump trucks to be washed off needs to be identified on the site plans. A water meter and backflow prevention device will be required.
6. Due to the nature of construction process a substantial amount of heavy equipment will enter and exit the proposed driveway. The existing roadway surface is in good condition; the applicant shall be responsible for the final product of the roadway surface Lagrange Street. It is recommended that if this project is approved, upon completion the entire roadway surface be milled and overlaid with 1-1/2" Type I-1 bituminous concrete from existing sewer manhole near Byron Road to the Brookline town line.

General:

The applicant will have to submit a Notice of Intent with the Newton Conservation Commission for any work within their jurisdiction [i.e. sewer main extension within Lagrange Street].

2. Any blasting of ledge will require a permit from the Fire Department.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building permits with the Department of Inspectional Service prior to any construction.

6. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
7. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*
8. The applicant will need to conform to the City's Tree Ordinance.
9. Sidewalks within the development should be continuous.
10. The applicant should consider extending the sidewalk within Lagrange Street from the proposed driveway southerly to Byron Road.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

MEMORANDUM

TO: Lou Taverna, P.E., Newton City Engineer

FROM: Rachel Gilbert, P.E.

DATE: March 9, 2006

RE: Kessler Woods Condominiums, Newton, MA Preliminary Stormwater Review

This memo summarizes Woodard & Curran's comments based on a preliminary review of the drainage report entitled Storm Runoff Analysis and Operation and Maintenance Plan dated January 10, 2006 submitted by H.W. Moore Associates, Inc.

After an initial review of the drainage report and watershed plans, we offer the following comments.

1. The applicant should revisit the rainfall depth selections for the 2, 10 and 100-year storm events. We recommend using 3.2" for the 2-year, 4.6" for the 10-year and 7" for the 100-year for Newton, MA.
2. The applicant should revise the design point entitled Flow to South Branch. It appears that two design points exist, one each for watershed A and B. Watershed A appears to drain by overland flow offsite to the west toward the wetland while watershed B drains by overland flow to the drainage system in Lagrange St., flowing west. These two watersheds should be analyzed with two different points of analysis in mind rather than at a point farther downstream called South Branch. Flow to the drainage system on Lagrange St. should be analyzed independently to ensure that flow to the street drainage system will not be increased under proposed conditions. This is important to minimize the potential for flooding in the street. Similarly, the flow to the adjacent wetland should be analyzed separately to ensure that hydration through stormwater runoff is replicated as much as possible under proposed conditions.
3. We recommend delineating the catch basin drainage areas in Lagrange St. as a separate exercise to ensure that the proposed development will not cause the grate inlet capacity of two cfs to be exceeded.
4. The peak rates shown in Table 7.2 should be summed by the computer model, rather than manually since the peak rates occur at different times.
5. The applicant should add dry wells to the BMP maintenance schedule consistent with the MA SM Guidelines, which state that dry wells should be inspected after every major storm event in the first few months after construction and then at least once per year thereafter. Water levels in the observation well should be recorded over several days to check the dry well drainage.
6. We recommend adding to the O&M plan that the detention tanks are to be inspected after every major storm for the first few months to ensure proper function.

7. We recommend adding to the O&M plan that the catch basins should be cleaned quarterly at a minimum and inspected monthly as per the MA SM Guidelines.
8. We recommend street sweeping during the summer season as suggested in the MA SM Guidelines.

RAG/rag

Attachment(s)

cc: